

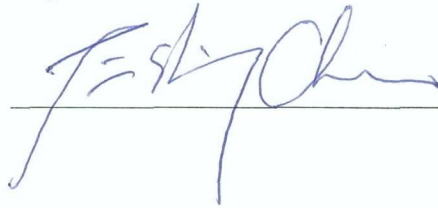
**HSERC MEMBERS OR THE VOTING REPRESENTATIVES'  
SIGN-IN SHEET FOR JUNE 10, 2010**

Dean M Yoshizu  
Dept. of Agriculture  
Board of Agriculture

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Tin Shing Chao  
Manager  
Occupational Safety and Health Division  
Department of Labor and Industrial Relations

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Henry Silva  
Hawaii Representative/LEPC Chairperson  
Hawaii County Fire Department

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Captain Carter Davis  
Honolulu Representative/LEPC Chairperson  
Honolulu Fire Department

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Barry Peria tt  




Albert Kauai  
Kauai Representative/LEPC Chairperson  
Kauai Fire Department

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Scott Kekuewa  
Maui Representative/LEPC Chairperson  
Maui Fire Department

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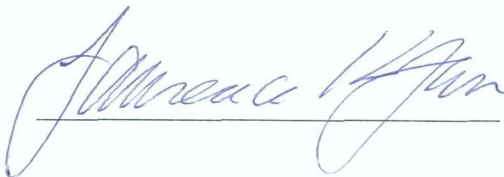


Laurence K. Lau  
Deputy Director, Environmental Health  
Department of Health

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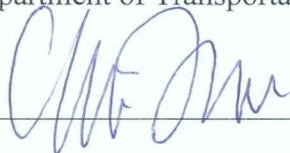
Katherine P. Kealoha *SK*  
Director  
Office of Environmental Quality Control

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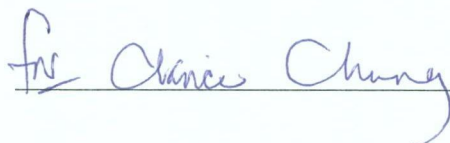
**HSERC MEMBERS OR THE VOTING REPRESENTATIVES' SIGN-IN  
SHEET FOR JUNE 10, 2010**

Chris Takeno  
Hazardous Materials Officer  
Department of Transportation



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Edward Teixeira  
Vice Director  
State Civil Defense  
Department of Defense



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Jay Maddock, Ph.D.  
Director  
Office of Public Health Studies  
University of Hawaii at Manoa

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HSERC MEETING SIGN-IN SHEET FOR June 10, 2010

Name	Organization	Telephone #	Fax #	E-Mail
Chris Curatilo	ERRG/EPA	533-6000		christopher.curatilo@errg.com
Andy Matsumoto	EHA	586-4641		andy.matsumoto@doh.hawaii.gov
Keith Kawadka	HEER			
Kate Gaynor	DOH	587 5879		kate.gaynor@doh.hawaii.gov
Terry Corpus	DOH/HEER	586-4249		terence.corpus@doh.hawaii.gov
Emarch	DOH	586-4249		
		1808		
Lara Payne	Pacific Disaster Center	843-2534		lpayne@pdc.org
Julieanna Iow	Pacific Disaster Center			
Sharon Leonida	HEER Office			

added on \*  
not signed in



STATE OF HAWAII  
DEPARTMENT OF HEALTH

P.O. BOX 3378  
HONOLULU, HAWAII 96801

In reply, please refer to:  
HEER OFFICE

HAWAII STATE EMERGENCY RESPONSE COMMISSION  
MEETING #79

Thursday, June 10, 2010 from 9:00 a.m. to 12:00 a.m.  
Department of Health  
919 Ala Moana Boulevard, Fifth Floor  
Honolulu, Hawaii 96814

AGENDA

- 1) 9:00 Call to Order  
Approval of Minutes from Mtg #78  
Announcements, Remarks  
Laurence Lau, Deputy Director for Environmental Health
- 2) 9:10 IT Systems and Projects for  
Emergency Work – Update  
And Discussion  
Andy Matsumoto – Homeland Emergency Response Exchange  
Kate Gaynor – Pacific Disaster Center EMOPsv4  
(Emergency Management Operations)  
LEPC, HEER
- 3) 9:40 LEPC Updates  
Henry Silva, Hawaii LEPC Representative  
Albert Kauai, Kauai LEPC Representative  
Scott Kekuewa, Maui LEPC Representative  
Carter Davis, Oahu LEPC Representative
- 4) 9:50 EPA Update  
Mike Ardito, USEPA Region 9
- 10:00 BREAK
- 5) 10:10 HMEP  
State Civil Defense
- 6) 10:20 Harbor Fire Fighting Status  
HSERC, LEPC, HEER
- 7) 10:40 HEPSCRA Administrative Rules  
Update, Discussion and Decisions  
HEER, Tetra Tech
- 8) 10:50 Waiver of Fees for Past Filing  
Years (Tier II)  
HEER, HSERC
- 9) 11:05 Update on NASTTPO  
LEPCs
- 10) 11:15 Other Business  
HEER Office – Request to  
DOT Airports for funds  
HSERC, HEER



11) 11:30 Schedule next HSERC meeting

HSERC, HEER, LEPCs



STATE OF HAWAII  
DEPARTMENT OF HEALTH

P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:

EHA/HEER Office

HAWAII STATE EMERGENCY RESPONSE COMMISSION  
MEETING # 78

Thursday, March 18, 2009 from 9:00 a.m. to 12:00 a.m.

Department of Health  
919 Ala Moana Boulevards, 5<sup>th</sup> Floor  
Honolulu, Hawaii 96814

Attendees

Voting: Laurence Lau, Department of Health; Carter Davis, Honolulu LEPC; Jamesner Damlao  
Department of Labor and Industrial Relations; Albert Kauai, Kauai County LEPC; Clarice Chung,  
State Civil Defense, Department of Defense; Rebecca Alakai, Office of Environmental Quality  
Control; Dr. Deborah Juarez, Office of Public Health Studies, Henry Silva, Hawaii County LEPC

Non-Voting: Sharon Leonida, Department of Health, HEER Office; Beryl Ekimoto, Department of Health,  
HEER Office; Keith Kawaoka, Department of Health, HEER Office; Paul Chong, Department of  
Health, HEER Office; Liz Galvez, Department of Health, HEER Office, Michael Ardito,  
USEPA, Cynthia Pang, U.S. Navy, Terry Corpus, Department of Health, HEER Office, Eric  
Jensen, Tetra Tech, Rosiland Selbach, Tetra Tech

1. Larry Lau called the meeting to order 9:10 am
  - 1.1 Introduction of persons attending meeting.
  - 1.2 Approval of minute. **Carter: moved to adopt the minutes from meeting #77. Henry Silva Seconded. Minutes adopted.**
  - 1.3 Larry will save remarks for end of meeting.
  
2. LEPC Updates
  - 2.1 Hawaii: Henry Silva
    - 2.1.1 LEPC meeting on February 18, 2010, announced the launch of their website at, **hawaiiilepc.org**. Still refining website, information on Tier II reporting, emergency, Hazmat information for public viewing is available.
    - 2.1.2 Working on HMEP project, County Civil Defense has edited, sending it out to be printed. Final cost to be determined by April.
    - 2.1.3 Also on February 18, Hawaii County Fire Department with sponsorship by Hawaii County LEPC held review meeting and follow up of "**Hilo Harbor Fire**". More discussion later in the meeting.

2.1.4 Last week joint 93 CST Drills on Hawaii. No incidents to report.

2.2 Kauai: Albert Kau

2.2.1 LEPC meeting on January 21, 2010. Discuss, review Response Plan with Eldon from Civil Defense. Will try to update plan in the up coming meetings. No incidents.

2.2.2 Five personnel to Hazmat Tech Chemistry and Tactics class on Oahu, five to Hawaii County for training.

2.3 Maui: Scott Kekuewa is not here.

2.4 Oahu: Carter Davis:

2.4.1 LEPC meeting on January 21, 2010. Mel Kaku from Department of Emergency Management Gave a presentation on Tsunami event, highlights of what occurred, lessons learned.

2.4.2 LEPC committee given report on what is happening at HSERC

3. EPA Update: Mike Ardito

3.1 Handout on table. NASTPPO will be held at San Luis Obispo, near San Francisco, May 10-13 asked who will attend. National Response Team, NRT has a new **“Quick Reference Guide” about Ethanol**. Website is: [www.nrt.org/production/NRT/NRTWeb.nsf](http://www.nrt.org/production/NRT/NRTWeb.nsf).

Workshops being planned for July for Hawaii facilities that report under some of these federal environmental programs; Emergency Planning and Community Right-to-Know Act, Risk Management Plan Program, Spill Prevention, Control and Countermeasures, Oil Pollution Act's Facility Response Planning. One of these sessions will be on the fifth floor on July 14, Waipahu on July 19, Maui on July 15, in Hilo July 21, 2010. Went over EPA goals for the coming years. Under the **Risk Management Plan Program**, EPA region 9 issued their **first Administrative Order** against a company that had **two Ammonia releases last year**. The second release caused people to seek medical attention and sent people to the hospital. Other facilities could receive Administrative Orders also. Annual report will be out on EPA website around Earth day next month.

Larry asked date on Carbon Neutrality which is January 1, 2012, Zero waste -to-Landfill also.

4. HMEP Update: Clarice Chung

4.1 Planning Grant needs status on planning project from Hawaii County. For the future, if County LEPCs have plans to use HMEP Planning Grant monies for any planning project, they should be thinking about it now. October 1 starts a new grant cycle, by November 1; you could start the planning project. Training Grant for 160 hour Hazmat Technician Course, 80 hours each for Chemistry and Tactics for Honolulu, Hilo. Maui would like to host training in 2011. Is this subject to approval from HSERC?

Carter and Henry explained about how agreement was reached to have a course in Honolulu and one would rotate between Maui and Big Island. Pending availability of funds, three courses could be held in Honolulu, Big Island and Maui. Kauai would attend these classes. Planning funds this year were used for Big Island project. Best way is to come up with resolution and agreement. The best time to make this would be after NASTTPO, at our next meeting. Maui should be present. Counties had until today to submit the number of people that will be attending the Honolulu and Hilo training. Clarice will then do an estimated budget cost per county. She can't be sure of how much money would be returned to the HMEP Grant Program until the estimate is done. Persons going to NASTTPO take notes and report back.

5. Harbor Fire Fighting Status: Henry Silva

5.1 After last HSERC, a meeting was held with Big Island Fire Chief. A discussion was held regarding planning and hazards in association with the barge defueling at the port. Chief agreed, meeting held on February 18, attending were; Hawaii County Fire, Hawaii County Civil Defense, Hawaii County LEPC, two members of the Coast Guard, HEER Office via phone, Department of Transportation personnel, the Hilo Harbor Master. Referring to the letter that HSERC had sent to the Department of Transportation about improvements, the outcome was that there is no money or plans. **Don't be hopeful.** The benefit from the meeting is the awareness, the concerns with Hilo Harbor and surrounding areas that encompass residential, industrial, tourism. Coast Guard made aware that they have equal, just as valid concerns. Coast Guard working on Marine Fire Fighting plan with Honolulu Fire Department. Discussion with Henry and Carter regarding Honolulu Harbor. Larry suggested he or HSERC could write a letter to Coast Guard. Henry stated that every Harbor in the state has issues when it concerns Marine Fire Fighting and Training that is associated with it. There is a void in communications with Coast Guard concerning neighbor islands. Oahu has more resources they can use if there is a fire in the Harbor, compared to Kauai, Maui, Big Island.

Carter pointed out that the big issue in Honolulu Harbor is that the State Harbors Division wants to shut down the fire boat, no funding. HFD and neighbor islands Fire Departments have been asking for Marine Fire Fighting training for the last decade, no support. We should suggest that it is a state wide issue. Discussion with Larry, Keith, Carter, Henry. Question on shippers and prevention of incidents. Any requirements that crews need to be trained for fires, what are their plans? Oil shippers have requirements that need to be met for pollution control purposes, anything for fire? Henry explained about **"Users Fee Improvement"**. Carter explained about **Coast Guard and Maritime Regulations**. Gave example of what may happen if fire occurred. Larry asked if we could get the Coast Guard to review **"Hilo Incident"**, to enforce federal law.

The Pacific States British Columbia Oil Spill Task Force have issues on how to control pollution, model for Inter-state and Federal relationship to improve them. Question on Marine Fire Fighting to Keith, has it come up at the Regional Response Team level. Issues at that level are relating to general hazcatting, not specific [unclear]. Cynthia Pang said it is **under RRT, under Marine Fire Fighting and Salvage Plan**. Both Coast Guard and Region 9 have the lead together. Mike Ardito mentioned the next Oceania Regional Response Team meeting is July 20, 2010. Larry asked to talk to Mike after the meeting. Liz Galvez noted that at the **"Area Contingency Plan Committee Meeting"**, lead by the Coast Guard, **Marine Fire Fighting always comes up on the agenda**. Training has been on going at Kalaeloa with Merchant Marine Community, CST, Fire. Communications is a problem. Hazmat Team has done boarding of vessels in Harbor, regular fire teams have not. Carter had done fire training at Navy about ten years ago, nothing recent. Larry wants the commission to keep working on this, coordination is an issue. The Regional Response Team effort and Area Contingency Plan is together. Carter feels that information needs to get out, **emphasize to the various organizations that they need to coordinate with the proper people**. Larry wants LEPCs and others to work together on this until next HSERC meeting. Keep this going while he is still here. Certain events will continue to occur, Volcano, Tsunami, Hurricane, Fires, we need to continue to prepare. Mike Ardito can request EPA put this on the agenda for July 20, 2010 meeting.

6. HEPCRA Administrative Rules Update: Rosiland Selbach – Tetra Tech

6.1 February 24, 2010 notice placed in major Newspapers on each island for Public Hearing to be

held on March 31, 2010. It will be held on the fifth floor at 919 Ala Moana Blvd. from 9 – 11:30 am. It will be statewide with Teleconference between islands. Rules are available on HEER website along with examples of Frequently Asked Questions. Rules and forms will be sent to LEPCs on outer islands. Public comment period ends on May 5, 2010

7. HSERC Financial Report Tier II Division of Funds, Decision

7.1 Sharon explained the amount of money, expense sheet, funds available for distribution to LEPCs. Explained about percentage split this year and pervious years. Discussion about rules and percentage split. **Carter moved to accept “FY 11 LEPC BUDGET Split Final March 18, 2010”, percentage split with \$1,000 base. Albert seconded. Motion adopted.**

8. Other Business: Larry

8.1 Discussion of problems during Tsunami, inundation zone, over loading of phone lines, information available on different websites. Families need to have a plan and supplies ready. Comments and examples on how to change peoples behavior .

8.2 Remarks: April 22, will be the 40<sup>th</sup> Anniversary of Earth Day. Trying to promote clean energy, reduction of green house gases, waste reduction. By being energy efficient we can save money. Clean Water Branch and other agencies will have a “Free Day at the Aquarium”.

9. Schedule next HSERC meeting;

June 10<sup>th</sup>, 9:00 am, **Carter moved to adjourn , Deborah Juaver second. Motion accepted.** Meeting adjourn at 10:20 am.

Respectively Submitted,

Sharon L. Leonida  
Environmental Health Specialist III





## HONOLULU LEPC HSERC Update

- Harbor Fire Fighting Status
  - No funds, no plans for harbor fire fighting improvements – statewide issue
  - HNL Harbor, state has indicated it may no longer have adequate funding for Fire Boat
  - County fire personnel lack marine fire fighting training, no future support planned
- HSERC Admin Rules public hearing on March 31, 2010

## HONOLULU LEPC HSERC Update

- HSERC Tier II Division of Funds Approved
  - FY 11, \$1,000 base with percentage split
  - Honolulu - \$31,260
  - Hawaii - \$17,002
  - Maui - \$12,545
  - Kauai - \$10,006

## HONOLULU LEPC HSERC Update

- Other Business
  - Discussion of Tsunami problems, to include inundation zone, over load of phone lines, information available on-line, families need to have a plan and supplies ready
  - April 22 will be the 40<sup>th</sup> anniversary of Earth Day, promote clean energy, reduction of greenhouse gasses, waste reduction

## HONOLULU LEPC June 8, 2010

- CLEAN UPDATE
  - Annie Lam, President, CLEAN
    - Represented by Lawton Maui, Tesoro

## HM Tech Training

- Oahu:
  - 80-hr Chemistry May 3-7/10-14, 2010
  - 80-hr Tactics, June 21-25/28 – 2 Jul, 2010
- Hawaii:
  - 80-hr Chemistry, April 19-23/26-30, 2010
  - 80-hr Tactics, May 17-21/24-28, 2010
- Grant will pay for travel expenses for neighbor-island personnel who travel

## CAMEO Training

- Oahu:
  - ICAMEO Beginner: 12-14 Jul 2010
  - UCAMEO Advanced: 15-17 July 2010
- Hawaii, Kauai, unable to host in 2010
- Maui, to be determined

## NASTTPO Meeting

San Luis Obispo, CA  
May 2010

- Excellent Turnout, +/- 100 attendees
- Col Bill Hatch director of CSTI
  - California expecting \$20 Billion deficit
  - Cuts, furloughs, staff reductions – all agencies
  - Great Quotes:
    - If you don't toot your own horn, someone will use it for a spittoon
    - The more you sweat in peacetime, the less you bleed in war
    - Good training is expensive, great training is really expensive, no training, you can't afford it

## NASTTPO Meeting

San Luis Obispo, CA  
May 2010

- Cynthia Quarterman, Administrator, DOT PHMSA
  - 1,000,000 daily movements of hazmat via intermodal, plus additional pipeline movements
  - HMEP will continue at about \$28 million per year with a slight increase in 2010
  - HMEP is a solid program expected to continue with the current administration
  - Congress and industry asking many accountability questions
  - Secretary of DOT has made HM a high priority

## NASTTPO Meeting

San Luis Obispo, CA  
May 2010

- Tonya Schreiber, HMEP Executive Director
  - Significant grant review process due to critical report printed in USA today late 2008, reported insufficient oversight of HMEP
  - Posted new FAQs for the Grantee on the PHMSA website
  - New Computer tracking system for HMEP grants
  - Complete & Accurate Information Needed
    - Readers outside of HMEP do not understand annual reports
    - Some States just using boiler plate process
    - Adopt tighter scrutiny of applications
  - Can't use for WMD related activities, must be chemical safety related

## NASTTPO Meeting

San Luis Obispo, CA  
May 2010

- Kyra Stewart, Grant Specialist, [kyra.stewart@dot.gov](mailto:kyra.stewart@dot.gov)
  - Grant deadline for applications moved to June 1<sup>st</sup>, FY09/10 reports due January 31, 2011
  - New email account for all technical assistance
    - [HMEP.Grants@dot.gov](mailto:HMEP.Grants@dot.gov) (202)366-8752
  - New Grant Administration Forms
    - Contact Info Change (lots of turnover, keep POC accurate)
    - Activity Request (find out if activity proposed is allowed)
    - Funds Transfers (move funding from planning to TRNG)
    - Will email forms out to state POC in about 8 weeks, will be available at the HMEP website

## NASTTPO Meeting

San Luis Obispo, CA  
May 2010

- Charlie Rogoff, HMEP Grant Manager
  - Use new technical assistance email account
  - Reports need safety performance indicators, show you are attacking problems, show you are improving response
  - New OMB Form 425 financial status report
  - Program Activities to date:
    - Trained 151,000 direct, 2,571,000 through T-t-T
    - Now have 2686 Fire Service Instructors
    - Exercises 14,315

## NASTTPO Meeting

San Luis Obispo, CA  
May 2010

- William Wright, Chemical Safety Board
  - Investigate Chemical Accidents
  - Promoting Prevention
  - Modeled after NTSB
- Latest Trends
  - Refinery accidents & fires, 9 recent events, very concerned about this increase
  - Process Industry accidents, 4 recent events
    - Must always use meters, must always vent to the outside, must always keep unnecessary personnel away

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- CSB Continued
  - Increase in old unsecured former hot sites, teens using these sites as hangouts, 5 recent events including deaths
  - Increase in Lab Accidents
  - 3 most common accident elements
    - Training
    - Communications
    - Community Planning
  - Considering opening a Houston, TX Office

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- EPA Updates from EPA HQ, provided by Kay Lawrence, EPA R9
  - Most EPA HQ staff at Gulf Oil Spill
  - NRT & RRT providing water/air monitoring & scientific support
  - A lot of challenges that have never been confronted before
  - A lot of new untested technologies been tried, a definite game changing event

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- EPA Update continues
  - EPA Administrator priorities
    - Taking action on climate change
    - Improving Air Quality
    - Cleaning up our communities
    - Expanding and Improving on environmental justice
    - Building strong state & tribal partnerships

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- Strategic Direction of CEPP, Office of Emergency Management
  - Bring high risk chemical facilities into compliance with CAA, EPCRA, CERCLA
  - Work with states to reduce chemical risks
  - Improve data collection, quality and analysis

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- Office of Enforcement & Compliance Assurance
  - Focus on pollution & chemical risks that make a difference in communities
  - Conduct civil & criminal enforcement that targets the most serious air, water and chemical hazards
  - Reset our relationships with states
  - Focus on High Risk Facilities

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- High Risk Facilities
  - 100k population in RMP WCS zone
  - Hazard Index >25
  - Accidental release within the last 5 years
  - Region 6 has the highest amount of high risk facilities
  - Plan to inspect 500-600 RMP facilities a year
    - 25% must be HR facilities
  - Higher penalties against big violators
  - Provide Inspector training & Enforcement support

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- EPA Update
  - OEM Website
    - Update of Q&A
    - Update of Federal List of Lists
  - In the process of revising the Tier II form
    - New data elements
    - New specific amounts instead of ranges

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- Ted Cromwell, DHS Chemical Facilities Anti-Terrorism Standards (CFATS)
  - Authorized 2006, originally authorized for 3 years with 1 year extension, Obama also requested an extension & committed to create a permanent program
  - CFATS Covered Facility, "any establishment that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous.

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- DHS CFATS
  - To date, over 38,000 top screens submitted
  - Currently 5,333 regulated sites
  - [csat@dhs.gov](mailto:csat@dhs.gov) 1-866-323-2957 for DHS & CFATS help desk

**NASTTPO Meeting**  
San Luis Obispo, CA  
May 2010

- CAMEO Updates by Tom Bergman
- LSU deliveries continue
- Tier II submit program may be made into a server based program
  - Each state provide their own server and IT support

**HONOLULU LEPC**  
March 16, 2010

- Other-New Business/Open Discussion
- Next Meeting, near HSERC Meeting, September 2010?



Mufi Hanneman, Mayor  
City & County of Honolulu



**HONOLULU LEPC**  
June 8, 2010

Carter Davis, Chair







**U.S. Environmental  
Protection Agency and  
U.S. Coast Guard Sector Honolulu**



**You are invited to attend an Inspector Information & Compliance Outreach Presentation**  
**Preparing for and Surviving a Facility Inspection In Hawaii**

**Hawaii State Department of Health, on July 14, 2010 at 8:00am-4:30pm**

**5th Floor Conference Room  
919 Ala Moana Blvd.  
Honolulu, HI 96814-4920  
(Metered Parking)**

**Filipino Community Center, on July 19, 2010 at 8:00am-4:30pm**

**Flores Ballroom  
94-428 Mokuola Street,  
Walpahu, HI 96797  
(FilCom Center Parking)**

**Additional workshops will be held off island at the University of Hawaii, Maui College on July 15th  
& University of Hawaii, Hilo on July 21, 2010**

**A Full Day Event, Including a Panel Discussion**

- Emergency Planning, Emergency Release Notifications, and Hazardous Chemical Reporting Regulations**
- Toxic Release Inventory (TRI)**
- Risk Management Program: *Required Components & How to Submit Them***
- Facility Inspections: *Understanding New USCG Facility Regulations***
- Hawaii Department of Health: *Hawaii Oil Facility Program Overview***
- Spill Prevention, Control and Countermeasure Plans (SPCC) Requirements & Response Planning (FRP)**

To reserve a spot or for more information, please Email: [Christopher.curatilo@errg.com](mailto:Christopher.curatilo@errg.com) or [Elizabeth.robnett@errg.com](mailto:Elizabeth.robnett@errg.com)

Tab G Project Narrative for Upcoming Activities

Planning Grant

The planning grant funds will be used for the following activities.

1. Annual HazMat Exercises for each of the LEPCs.
2. Update of Emergency Operation Plans
3. LEPC Support
4. HazMat Explo 2010 Convention in Las Vegas, Nevada, October, 2010
5. National Association of SARA III Program Officials (NASTTPO) Convention in San Luis Obispo, California, May 2010

Since Hawaii is an island state, meeting to share and discuss information involves substantial traveling.

HSERC meetings are held quarterly. Each LEPC should follow a similar schedule. A representative from each of the LEPCs attends each HSERC meeting. The HEP CRA Coordinator attends each LEPC meeting. Each county encompasses different islands. The only way to reach another island, in a timely manner, is by air. In the Fiscal Year 10-11, a one-way coupon cost approximately \$100.00; a car rental coupon cost \$36.00; meal allowance of \$20.00 and parking of \$10.00.

LEPC Meetings

Airfare: We are planning for four meetings annually. There are four counties. One HEER representative flies to twelve of the sixteen meetings (4 of which are on Oahu).  $1 \times 12 \times \$100 = \$1,200.00$   
Rental Car:  $12 \text{ meetings} \times \$36 = \$432.00$   
Meal Allowance:  $1 \times 12 \times \$20 = \$240.00$   
Parking:  $12 \times \$10 = \$120.00$   
Total: \$1,992.00

HazMat Explo 2010 Convention in Las Vegas, Nevada, October, 2010

Airfare: \$640.00  
Registration: \$250.00  
Mid-Year Meeting Fee for NASTTPO: \$50.00  
Per diem:  $7 \times \$145.00 = \$1015.00$   
Luggage Charge = \$60.00 (R/T)  
Fare from airport to hotel:  $2 \times \$20.00 = \$40.00$   
Estimated lodging is \$110.00 per day. Excess expense for lodging:  $6 \times \$25.00 = \$150.00$   
Total: \$2,205.00

National Association of SARA III Program Officials (NASTTPO) Convention in San Luis Obispo, California, May 2010

Airfare: \$1000.00  
Registration: \$300.00  
Mid-Year Meeting Fee for NASTTPO: \$35.00  
Per diem:  $7 \times \$145.00 = \$1015.00$   
Luggage Charge = \$60.00 (R/T)  
Fare from airport to hotel:  $2 \times \$20.00 = \$40.00$   
Estimated lodging is \$125.00 per day. Excess expense for lodging:  $6 \times \$40.00 = \$240.00$   
Total: \$2,690.00

The total cost for the HSERC and LEPC activities for the year is \$6,887.00.



March 18, 2010

HAWAII STATE EMERGENCY RESPONSE COMMISSION

DRAFT FY11 BUDGET

Collections from the TIER II Reports: \$77,700

HSERC Expenses:

To attend LEPC Meetings:	\$1,992.00
HazMat Explo 2010:	\$2,205.00
NASTTPO 2010 Conference in San Luis Obispo, CA.	\$2,690.00

Funds available for distribution to the LEPCs:

\$77,700  
-1,992  
-2,205  
-2,690

\$70,813.

TIER II Reporting Facilities by Counties (based on Tier2Submit 2008):

City & County of Honolulu:	346	45.29%
County of Hawaii	183	23.95%
County of Maui	132	17.28%
County of Kauai	103	13.48%

**FY 11 LEPC BUDGET SPLIT  
FINAL MARCH 18, 2010**

**Straight percentage split:**

<b>Honolulu</b>	<b>\$70,813 x 45.29% = \$32,071</b>
<b>Hawaii</b>	<b>\$70,813 x 23.95% = \$16,960</b>
<b>Maui</b>	<b>\$70,813 x 17.28% = \$12,236</b>
<b>Kauai</b>	<b>\$70,813 x 13.48% = \$ 9,546</b>

**With a \$1000 Base:**

<b>Honolulu</b>	<b>\$66,813 x 45.29% + \$1,000 = \$31,260</b>
<b>Hawaii</b>	<b>\$66,813 x 23.95% + \$1,000 = \$17,002</b>
<b>Maui</b>	<b>\$66,813 x 17.28% + \$1,000 = \$12,545</b>
<b>Kauai</b>	<b>\$66,813 x 13.48% + \$1,000 = \$10,006</b>

MARCH 18, 2010

HAWAII STATE EMERGENCY RESPONSE COMMISSION

DRAFT FY11 LEPC FUNDS DISTRIBUTION

After deduction of HSERC operational expenses, the balance of the TIER II funds in the amount of \$70,813.00 are proposed to be dispersed in the following manner; a base of \$1,000.00 and the balance on the percentage of TIER II reporting facility in each emergency planning district.

Honolulu	$\$1,000 + .4529 (66,813) = \$1,000 + \$30,260 = \$31,260$
Hawaii	$\$1,000 + .2395 (66,813) = \$1,000 + \$16,002 = \$17,002$
Maui	$\$1,000 + .1728 (66,813) = \$1,000 + \$11,545 = \$12,545$
Kauai	$\$1,000 + .1348 (66,813) = \$1,000 + \$ 9,006 = \$10,006$

[CHAPTER 128E]  
HAWAII EMERGENCY PLANNING AND COMMUNITY  
RIGHT-TO-KNOW ACT

Section

- 128E-1 Definitions
- 128E-2 Designation and functions of the Hawaii state emergency response commission
- 128E-3 Powers; rulemaking; appointment of hearing officers
- 128E-4 Establishment of emergency planning districts
- 128E-5 Establishment and functions of local emergency planning committees
- 128E-6 Reporting requirements
- 128E-7 Emergency notification requirements
- 128E-8 Funds for operation
- 128E-9 Filing fees
- 128E-10 Immunity from civil liability
- 128E-11 Penalties and fines
- 128E-12 Enforcement
- 128E-13 Relationship to other laws

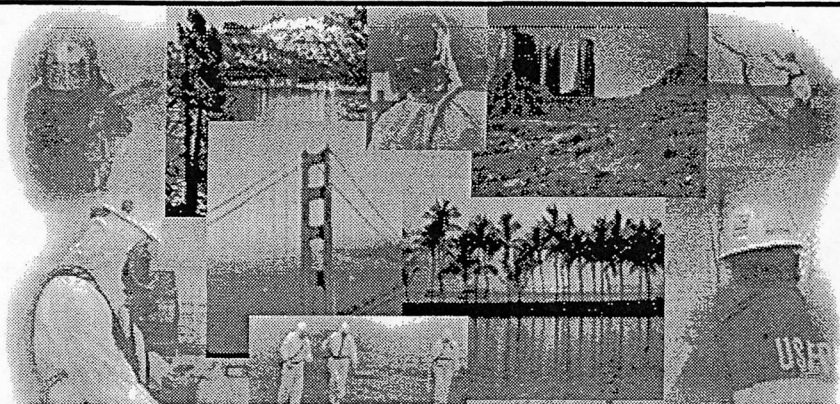
[Previous](#)

[Vol03\\_Ch0121-0200D](#)

[Next](#)



United States  
Environmental Protection Agency  
Pacific Southwest Region



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**EMERGENCY PREVENTION, PREPAREDNESS, AND RESPONSE  
PROGRAM UPDATE FOR HAWAI'I SERC  
MEETING IN HONOLULU ON JUNE 10, 2010**

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**Hawai'i Workshops for Facility Compliance with Federal Environmental Programs This July**

For the first time in five years, the U.S. EPA will be providing inspector information and compliance outreach workshops for Hawai'i facilities reporting under some federal environmental programs including:

- Emergency Planning and Community Right-to-Know Act (EPCRA)
- Risk Management Plan (RMP) Program under the Clean Air Act Amendments
- Spill Prevention, Control and Countermeasures (SPCC)
- Oil Pollution Act's Facility Response Planning (FRP)

Also:

- A representative from the U.S. Coast Guard will be there to talk about marine facility inspections for non-homeland security issues.
- A representative from the Hawai'i Department of Health will be there to talk about the state's EPCRA program and the state's oil facility program.

This July there will be four of these "all day" workshops (each scheduled from 7:45 am to 4:30 pm). There is no registration fee. Registration for all four workshops is now open. In addition to regulated facilities, SERC and LEPC members, and fire department representatives are encouraged to register and attend one of the workshops. Please pre-register by Thursday, July 8 as these workshops may fill up quickly. To attend, please pre-register by email to: [Christopher.Curatilo@errg.com](mailto:Christopher.Curatilo@errg.com) or [Elizabeth.Robnett@errg.com](mailto:Elizabeth.Robnett@errg.com). Please provide the following information:

- Selected date and location of workshop registering to attend
- Participant name, facility or agency affiliation, participant email address and phone number

**The workshops:**

- Wednesday, July 14 at the Hawai'i Department of Health's fifth floor conference room at 919 Ala Moana Blvd., in Honolulu, HI 96814-4920. There is metered and limited parking nearby at that location.
- Monday, July 19 at the Filipino Community Center's Flores Ballroom, at 94-428 Mokuola Street, in Waipahu, HI 96797. There is an adjacent parking lot for the Filipino Center.
- Thursday, July 15 at the University of Hawai'i, Maui College, Pilina multi-purpose room, 310 W. Ka'ahumanu Avenue, Kahului, HI 96732
- Wednesday, July 21 at the University of Hawai'i, Hilo campus, 200 W. Kawili Street #127, Hilo, HI 96720-4091

(over)

## **EPA Pacific Southwest Regional Annual Progress Report 2010**

The annual progress report 2010 for the EPA Pacific Southwest Region's environmental programs was issued for the 40<sup>th</sup> anniversary of Earth Day and posted to our Web site in April at:

[www.epa.gov/region9/annualreport](http://www.epa.gov/region9/annualreport) .

### **Recent Additions to the EPA's National Web site for Emergency Prevention and Preparedness**

There are several recent highlighted additions to the EPA's national Web site for EPCRA and related programs at [www.epa.gov/emergencies](http://www.epa.gov/emergencies) . The new additions include:

- EPA's Gulf of Mexico oil spill response link
- EPA's federal fiscal year 2009 annual report for Emergency Management: Prevention, Preparedness and Response
- EPA's interim policy on involvement of facility employees and employee representatives in on-site compliance evaluations at Risk Management Plan (RMP) program facilities.

### **Consolidated Chemical List of Lists for Emergency Planning Programs (May 2010 Version)**

The consolidated list of chemicals subject to the Emergency Planning and Community Right-to-Know Act (EPCRA) and Section 112(r) of the Clean Air Act Amendments (also known as the "List of Lists") was prepared to help firms handling chemicals determine whether they need to submit reports under EPCRA Sections 302, 304, or 313 of EPCRA and, for a specific chemical, what reports may need to be submitted. It also helps firms determine whether they will be subject to accident prevention regulations under the Clean Air Act Amendments (CAAA) Section 112(r), the Risk Management Plan program. These lists should be used as a reference tool, not as a definitive source of compliance information. Compliance information for EPCRA is published in the Code of Federal Regulations (CFR), 40 CFR Parts 302, 355, and 372. Compliance information for the CAAA Section 112(r) is published in 40 CFR Part 68. The List of Lists was released in an updated version in May 2010 and is available in several formats: Adobe PDF and Microsoft Excel.

### **NASTTPO Meetings 2010**

The most recent annual meeting of the National Association of SARA Title III Program Officials (NASTTPO) was held near San Luis Obispo, CA the week of May 10. The "mid-year" meeting of NASTTPO will be held in conjunction with the EPA national meeting for the Emergency Prevention and Preparedness programs and is tentatively scheduled for the week of Oct. 24 in Las Vegas. Please check the NASTTPO Web site for additional information when available at <http://www.nasttpo.com/home>.

### **EPP Pacific Southwest EPP Program Contact**

For more information about the U.S. EPA's Emergency Prevention and Preparedness program for Hawai'i, you may contact the liaison, Mike Ardito, at (415) 972-3081 or by email at [ardito.michael@epa.gov](mailto:ardito.michael@epa.gov) .



**State of Hawaii, Department of Health  
Hazard Evaluation and Emergency Response Office  
Non-Emergency Response Services Contract**

**Modification #2 to Task Order No. 31  
Hawaii Department of Health  
HEPCRA Rule Making  
Scope of Work**

This cost estimate is prepared for technical services to be conducted by Tetra Tech EM Inc. (Tetra Tech) under the State of Hawaii, Department of Health (DOH), Hazard Evaluation Emergency Response (HEER) Office, Non-Emergency Response Services Contract ASO LOG NO. 06-077, as amended by 06-077 Modification No. 8. This work plan is based on the scope of work discussed in a meeting with DOH in late March 2010.

**SCOPE OF WORK**

Tetra Tech will provide technical support to the DOH HEER Office in support of developing an inspection manual and enforcement manual to aid DOH in implementing HEPCRA.

**Task 1 – Project Management**

This task includes project management activities such as client communications, and the preparation of an invoice and monthly status report (MSR). The MSR will include a summary of activities conducted during the reporting period, any outstanding financial or technical issues, upcoming activities, and a list of project milestones, deliverables, or checkpoints. The technical approach and cost estimate assume that this project will be active through September 30, 2010.

**Task 4 – Local Emergency Planning Committee (LEPC) Implementation Package**

Tetra Tech will prepare an implementation manual to assist the LEPCs to implement the rule. An electronic version will be prepared that will include hyperlinks to relevant resources including the final rule, lists of environmental hazardous substances, applicable federal regulations, HEER's website for Tier II reporting, EPA Region IX homepage for TRI reporting as well as contacts for HEER Office and EPA assistance. Tetra Tech will develop a conversion chart to assist with calculations required for reporting (e.g. gallons to pounds, gaseous state to pounds). A hard copy version may also be prepared that will include all of the same documents as the electronic version.

**Task 5 – HEER Office Inspection Manual**

Tetra Tech will provide support to DOH in the development of an inspection manual to aid the HEER office in performing consistent facility inspections. The inspection manual will include an inspection checklist that can be used to obtain necessary information to determine compliance and will address relevant provisions in the final rule. Tetra Tech will also prepare instructions for completing the checklist.

**Task 6 – HEER Office Enforcement Response Plan**

Tetra Tech will provide support to DOH in the development of a draft enforcement response plan with accompanying penalty calculator. In creating the plan, Tetra Tech will conduct research on applicable EPA and state programs to ensure relevant provisions in federal and state administrative rule have been considered.

**PROJECT SCHEDULE AND DELIVERABLES**

The project schedule is based on the scope of work and tasks presented in this work plan. The project schedule is outlined below and has an anticipated date of completion of September 30, 2010. Project deliverables are shown in bold below. All deliverables will be sent electronically to DOH unless specified otherwise.

**PROJECT SCHEDULE AND DELIVERABLES**

Technical support under this task will be conducted through September 30, 2010. The deliverables and other project activities associated with the scope for Tasks 3 through 5 and a recommended timeline are presented in the table below.

Activity	Proposed Timeline
Notice to proceed.	July 15, 2010
Kick-off meeting with DOH project manager to review objectives of all documents	July 30, 2010
<b>Draft of the LEPC implementation package.</b>	<b>August 16, 2010</b>
<b>Draft of the HEER Office Inspection Manual and Enforcement Plan</b>	<b>August 30, 2010</b>
<b>Final version of all three documents</b>	<b>September 15, 2010</b>

**COST ESTIMATE**

Tetra Tech has estimated the costs to successfully conduct the tasks above at \$10,490, including State of Hawaii General Excise Tax. The cost estimate and supporting backup information are included as an attachment.

The cost estimate is based on the technical approach, assumptions, deliverables, and schedule presented in this modification. Actual costs will be billed according to the Time and Materials schedule identified in the original contract, as amended.

LINDA LINGLE  
GOVERNOR

MAJOR GENERAL ROBERT G. F. LEE  
DIRECTOR OF CIVIL DEFENSE

EDWARD T. TEIXEIRA  
VICE DIRECTOR OF CIVIL DEFENSE

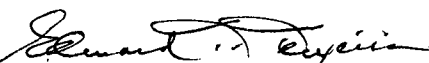


PHONE (808) 733-4300  
FAX (808) 733-4287

**STATE OF HAWAII**  
**DEPARTMENT OF DEFENSE**  
**OFFICE OF THE DIRECTOR OF CIVIL DEFENSE**  
3949 DIAMOND HEAD ROAD  
HONOLULU, HAWAII 96816-4495

June 8, 2010

TO: Mr. Laurence K. Lau, Chair  
Hawaii State Emergency Response Commission

FROM: Edward T. Teixeira   
Vice Director of Civil Defense

SUBJECT: HSERC Meeting – June 10, 2010

I am unable to attend the June 10, 2010, HSERC meeting due to a conflicting schedule.

I hereby appoint Clarice Chung from State Civil Defense to represent me at the above meeting with all the rights as a voting member.



## Hawai'i County Local Emergency Planning Committee

c/o Hawai'i District Health Office  
1582 Kamehameha Avenue  
Hilo, Hawai'i 96720

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June 2, 2010

### Hazard Evaluation and Emergency Response Office

C/o Mr. Larry Lau, HSERC Chair  
919 Ala Moana Blvd., room 206  
Honolulu, Hawaii 96814-4920

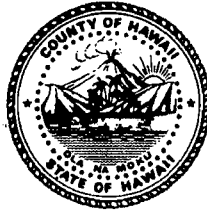
Aloha Mr. Larry Lau,

As Chairman of The Hawaii County LEPC, I am assigning Mr. Barry Periatt, in my absence. Refer to May 28, 2010 letter, from County Of Hawaii, Mayor Billy Kenoi. Mr. Periatt is authorized to carry on any business concerning the Hawaii County LEPC and HSREC, during its June 8, 2010 meeting.

Respectfully,

Henry G. Silva, Chairman  
Hawaii County LEPC  
aposilva@hawaiiantel.net

**William P. Kenoi**  
*Mayor*



**William T. Takaba**  
*Managing Director*

**Walter K.M. Lau**  
*Deputy Managing Director*

**County of Hawai'i**  
**Office of the Mayor**

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553  
KONA: 75-5722 Hanama Place, Suite 102 • Kailua-Kona, Hawai'i 96740  
(808) 327-3602 • Fax (808) 326-5663

May 28, 2010

Henry G. Silva, Chairperson  
Local Emergency Planning Committee  
Hawai'i State District Health Office  
1582 Kamehameha Avenue  
Hilo, HI 96720

Dear Mr. Silva:

In accordance with established bylaws governing the County of Hawai'i Local Emergency Planning Committee (LEPC), I hereby authorize the Chairperson of the LEPC to appoint a replacement from the LEPC membership to represent the LEPC at meetings of the Hawai'i State Emergency Response Commission (HSERC) whenever the Chairperson is unable to attend. This authorization is to remain in effect until further notice.

Aloha,

**Billy Kenoi**  
**MAYOR**

cc: Brandon Gonzalez



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File: EHA/HEER Office

10-187 sl

March 22, 2010

LEPC Chairs:

At the HSERC meeting held on March 18, 2010, the TIER II funds in the amount of \$70,813.00 that is presently available to the LEPCs has been approved by the HSERC membership to be dispersed in the following manner: a base of \$1,000 and the balance on the percentage of TIER II funds collected in each emergency planning district for the 2008 calendar year. The following is the distribution to the nearest dollar:

Honolulu	$\$1,000 + .4529 (66,813) = \$1,000 + \$30,260 = \$31,260$
Hawaii	$\$1,000 + .2395 (66,813) = \$1,000 + \$16,002 = \$17,002$
Maui	$\$1,000 + .1728 (66,813) = \$1,000 + \$11,545 = \$12,545$
Kauai	$\$1,000 + .1348 (66,813) = \$1,000 + \$ 9,006 = \$10,006$


If there is any additional distribution of funds, it shall be approved by the HSERC committee members.

Please invoice the HEER Office for your respective LEPC funds. The invoices should not be dated prior to July 2010 and will not be processed until the start of the new fiscal year.

One of the conditions in receiving funding requires the LEPC to conduct quarterly meetings. Please send a tentative schedule for your FY10-11 quarterly LEPC meetings to Sharon Leonida via postal mail or e-mail.

If there are any questions, please call (808) 586-4249.

Sincerely,

  
C. Curtis Martin

Emergency Preparedness and Response/Prevention Section



MARCH 22, 2010

HAWAII STATE EMERGENCY RESPONSE COMMISSION

DRAFT FY11 LEPC FUNDS DISTRIBUTION

After deduction of HSERC operational expenses, the balance of the TIER II funds in the amount of \$70,813.00 are proposed to be dispersed in the following manner; a base of \$1,000.00 and the balance on the percentage of TIER II reporting facility in each emergency planning district.

Honolulu       $\$1,000 + .4529 (66,813) = \$1,000 + \$30,260 = \$31,260$

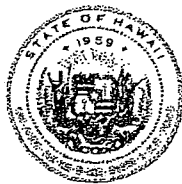
Hawaii         $\$1,000 + .2395 (66,813) = \$1,000 + \$16,002 = \$17,002$

Maui           $\$1,000 + .1728 (66,813) = \$1,000 + \$11,545 = \$12,545$

Kauai          $\$1,000 + .1348 (66,813) = \$1,000 + \$ 9,006 = \$10,006$

Regarding the Distribution of LEPC Operational Expenses, a motion was made and seconded to approve the "LEPC Operational Funds Distribution" and unanimously approved by the HSERC membership. Minutes to follow.

LINDA LINGLE  
GOVERNOR OF HAWAII



KATHERINE PUANA KEALOHA  
DIRECTOR

STATE OF HAWAII  
OFFICE OF ENVIRONMENTAL QUALITY CONTROL  
235 S BERETANIA ST. SUITE 702  
HONOLULU, HAWAII 96813  
Tel. (808) 586-4185  
Fax. (808) 586-4186  
Email: oeqc@doh.hawaii.gov

December 18, 2008

MEMORANDUM

TO: Laurence K. Lau, Chair  
Hawaii State Emergency Response Commission

FROM: Katherine Puana Kealoha *KPK*  
Director

SUBJECT: Hawaii State Emergency Response Commission (HSERC)

There may be times when I am unable to attend the HSERC meetings due to a conflicting schedule. I hereby appoint Rebecca Alakai from my staff to represent me at the December 18, 2008 meeting and all future meetings as a voting member.

**Leonida, Sharon L**

---

**From:** Matsumoto, Andy  
**Sent:** Thursday, June 10, 2010 9:40 AM  
**To:** Leonida, Sharon L  
**Cc:** Kawaoka, Keith E; Lau, Laurence K.  
**Subject:** HSERC Meeting - HERE Website Links

Hi Sharon,

As promised, below are a few website links that provide more information about the Homeland Emergency Response Exchange (HERE) application which DOH recently was awarded a grant to implement. If any of the HSERC members have any questions, they can contact me.

- a. <http://www.herenetwork.org/>
- b. <http://www.exchangenetwork.net/exchanges/cross/here.htm>
- c. <http://www.exchangenetwork.net/exchanges/cross/HEREFactSheet.pdf>

Thanks,

Andy K. Matsumoto  
Environmental Information Manager  
State of Hawaii, Department of Health  
Ph. (808) 586-4641, Fax (808) 586-4370  
[andy.matsumoto@doh.hawaii.gov](mailto:andy.matsumoto@doh.hawaii.gov)

HSERC - HERE website links 6-10-10

Leonida, Sharon L

---

**From:** Selbach, Rosiland [rosiland.selbach@tetrattech.com]  
**Sent:** Thursday, May 27, 2010 11:29 AM  
**To:** Lao, Harold C; Leonida, Sharon L; Ekimoto, Beryl Y; Leland Nakai  
**Cc:** Phillips, Dave  
**Subject:** FW: Draft Final Rules

Hello All,

Please find attached the revised rules per comments from Alexander and Baldwin and EPA. The changes and comments are still in track changes mode for your review. Also below are notes from Dave on the changes he made.

It appears we need to have a discussion per the information in Dave's email. Please review, let us know your thoughts and when you will be available for a discussion.

Thank you,  
Roz


**Rosiland Selbach | Environmental Professional**

Tetra Tech EM Inc.

737 Bishop St., Suite 3010 | Honolulu, HI 96813

Main: 808.441.6600 | Direct: 808.441.6609 | Fax: 808.836.1689

PLEASE NOTE: This message, including any attachments, may include privileged, confidential and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system.

 **Live Green, Work Green, Save Green**

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**From:** Phillips, Dave  
**Sent:** Wednesday, May 26, 2010 1:38 PM  
**To:** Selbach, Rosiland  
**Subject:** Draft Final Rules

Roz,

I have attached a revised version of the rules in response to A&B comments and EPA's informal comment concerning ensuring that Tier II reporting is based on the facility's storage of hazardous chemical in the proceeding year in order to be consistent with federal EPCRA. I have included comment boxes and indicated in red font (and strikeout) revisions made to the rule.

In general, I made changes consistent with A&B comments. Before I complete a formal response to their comments and for other changes to include in the Administrative Record, we will need to discuss the changes with HEER. The big issue is that I think A&B is correct that HEER cannot require facilities to notify of EHS and hazardous substances under the emergency planning requirements.

In an email that Leland obtained from EPA, EPA noted that "Since transportation and storage incident to transportation is not covered under EPCRA except for releases under Section 304, the State may do any of the following. First of all, if the material in the rail or truck has not reached its ultimate consignee, then it is still under transportation so therefore it is covered under DOT. So, HI can do one of the following. (1) If the facility is subject to the requirements under emergency planning notification (section 302 of EPCRA), then the LEPC can request information necessary for developing and implementing the emergency plan (EPCRA section 303(d)(3)). So, using this authority, they may get information about the materials in temporary storage. Most likely the facilities may cooperate with the LEPC. (2) If the facility is not subject to the emergency planning notification requirements, then using the authority under EPCRA section 302(b)(2), the Governor or SERC can designate additional facilities which shall be subject to the requirements after public notice and comment. After

6/4/2010

doing that, the LEPC can use the authority under section 303(d)(3) as stated above. (3) Lastly, since EPCRA section 321(a) gives the authority for States to have more stringent requirements than the Federal, the State regs can be revised to require facilities to report materials stored incident to transportation. In any case, States can of course "encourage" facilities to report materials in transportation or stored incident to transportation."

HEER therefore can:

- Reporting* 1. Write the regulation to enable LEPCs to request the information about extremely hazardous substances and hazardous materials under active shipping papers and stored for more than 72 hours if the facility is already subject to emergency planning requirements (see EPA's Option 1).
- not reporting* 2. If the facilities are not already subject to emergency planning requirements, identify those facilities in this rule and state that LEPCs may require them to request the information (see EPA's option 2).
3. Encourage facilities to report materials in transportation (which is how I revised the regulation and EPA notes at the end).

While EPA notes that section 321(a) of federal EPCRA gives states the authority to be more stringent than federal EPCRA, the relevant provisions of HEPCRA (see 128E-6(a)(1) as amended by Act 087) do not appear to authorize DOH to be more stringent than federal EPCRA for emergency reporting requirements. Thus, HEER cannot require reporting of EHS under active shipping papers using HEPCRA and allowing for the state to be more stringent. ?

You can forward this information to Harold, Sharon, and Beryl (and Leland, if he is interested) so we can discuss.

Thanks,

Dave

6/4/2010

*DRAFT*

DEPARTMENT OF HEALTH  
Adoption of Chapter 11-453  
Hawaii Administrative Rules

May 26, 2010

Comment [S1]: Updated date.

Chapter 453 of Title 11, Hawaii Administrative Rules, entitled "Hawaii Emergency Planning and Community Right-to-Know Act" is adopted to read as follows:

DRAFT

HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 453

HAWAII EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW  
ACT

Subchapter 1 Introduction and General  
Provisions

- \$11-453-1 Purpose
- \$11-453-2 Definitions
- \$11-453-3 Incorporations by reference
- \$11-453-4 Electronic business

Subchapter 2 State Emergency Response  
Commission

- \$11-453-5 Establishment of state emergency  
response commission
- \$11-453-6 Commission members and their  
responsibilities
- \$11-453-7 Duties and responsibilities
- \$11-453-8 Rulemakings, appointment of hearing  
officers
- \$11-453-9 Immunity from civil liability

Subchapter 3 Local Emergency Planning  
Committees

- \$11-453-10 Establishment of local emergency  
planning districts
- \$11-453-11 Establishment of local emergency  
planning committees
- \$11-453-12 Committee members

*DRAFT*

§11-453-13 Duties and responsibilities  
§11-453-14 Funding  
§11-453-15 Immunity from civil liability

Subchapter 4 Emergency Planning

§11-453-16 Facilities subject to emergency  
planning requirements  
§11-453-17 Emergency planning requirements  
§11-453-18 Calculation of quantities for  
comparison with threshold planning  
quantities for solids and mixtures  
§11-453-19 List of extremely hazardous substances  
and their threshold planning  
quantities

Subchapter 5 Emergency Release Notification

§11-453-20 Facilities subject to emergency release  
notification  
§11-453-21 Designation of hazardous substances  
§11-453-22 Determination of reportable  
quantities  
§11-453-23 Release notification requirements  
§11-453-24 Applicability of other release  
reporting requirements to facilities  
subject to emergency release  
notification requirements

Subchapter 6 Hazardous Chemical Reporting

§11-453-25 Facilities subject to hazardous  
chemical reporting requirements  
§11-453-26 Submittal of material safety data  
sheets  
§11-453-27 Submittal of Hawaii chemical inventory  
form (tier II)  
§11-453-28 Submittal of tier II forms by  
request  
§11-453-29 Submittal of emergency response plans



DRAFT

§11-453-30 Notification that extremely hazardous substance or hazardous chemical reporting is no longer required

Subchapter 7 Toxic Chemical Release Reporting

§11-453-31 Facilities subject to toxic chemical release reporting and recordkeeping

Subchapter 8 Funding and Fees

§11-453-32 Annual inventory filing fees for hazardous chemical reporting

§11-453-33 Local emergency response planning committees account

Subchapter 9 Community Right-to-Know Requests

§11-453-34 Receiving and processing community right-to-know requests

§11-453-35 Trade secret claims

Subchapter 10 Enforcement

§11-453-36 Violations

§11-453-37 Penalties and fines

§11-453-38 Inspection procedures

SUBCHAPTER 1

INTRODUCTION AND GENERAL PROVISIONS

§11-453-1 Purpose. (a) The purpose of the rules in this chapter is to implement the Hawaii Emergency Planning and Community-Right-to-Know Act. The rules are to administer and enforce the reporting requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 ("SARA Title III") and regulations for emergency planning notification, material safety data sheets, chemical lists, emergency

**Comment [S2]:** Changed title of this section to clarify that the section establishes rules governing assertion of trade secrecy claims for chemical identity information collected under federal EPCRA (Title III) sections 303(d)(2) and (d)(3), 311, 312, and 313. The rules also discuss the disclosure of chemical identity information claimed as trade secret, and determinations by EPA of whether this information is entitled to trade secret treatment. The rules reflect federal regulations established under EPCRA to govern trade secret claims and disclosure of such information. NOTE: This section does not cover claims for confidentiality of the location of a hazardous chemical that is reported under Tier II (EPCRA section 312). Those requirements are separate and authorized under another part of EPCRA (312) and 40 CFR part 370.30.

**Comment [RS3]:** Only supposed to capitalize Federal laws, agencies, etc.

*DRAFT*

and hazardous chemical inventory forms, and toxic chemical release forms and to supplement the federal statute and regulations in the interest of protecting the health and safety of the citizens of Hawaii. [Eff ] (Auth: HRS §§128E-1, 128E-2, 128E-3, 128E-4, 128E-5, 128E-6, 128E-7, 128E-8, 128E-9, 128E-10, 128E-11, 128E-12, 128E-13) (Imp: HRS §§128E-1, 128E-2, 128E-3, 128E-4, 128E-5, 128E-6, 128E-7, 128E-8, 128E-9, 128E-10, 128E-11, 128E-12, 128E-13)

§11-453-2 Definitions. The following words or terms, when used in this chapter, shall have the following meanings:

"Administrator" means the administrator of the United States Environmental Protection Agency.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601-9675.

"Commission" means the Hawaii state emergency response commission.

"Committee" means the local emergency planning committee within each county responsible for preparing hazardous material plans and performing other functions under the Emergency Planning and Community Right-to-Know Act of 1986 and section 128E, Hawaii Revised Statutes (HRS).

"County agency" means a county or any officer or agency thereof.

"Department" means the department of health.

"Director" means the director of health.

"EPA" means the United States Environmental Protection Agency.

"EPCRA" means the Emergency Planning and Community Right-to-Know Act of 1986, as amended, 42 U.S.C. sections 11001-11050.

"Emergency response plan" means a written plan outlining procedures to protect public health and safety in the event of an accidental release of an extremely hazardous substance. The required elements

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for an emergency response plan are listed in section 11-453-29(b).

"Environment" means any waters, including surface water, ground water, or drinking water; any land surface or any subsurface strata; or any ambient air, within the state or under the jurisdiction of the state.

"Extremely hazardous substance" or "EHS" means any substance listed in Appendices A and B of 40 Code of Federal Regulations (CFR) part 355, as amended.

"Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor carrier, rolling stock, aircraft, site, or area where a hazardous substance or pollutant or contaminant has been deposited, stored, disposed of, or placed, or otherwise comes to be located. The term does not include any consumer product in consumer use.

"Hazardous chemical" means any hazardous chemical as defined under 29 Code of Federal Regulations 1910.1200(c), except that such term does not include the following substances:

- (1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.
- (2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
- (3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.
- (4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.

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- (5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

"Hazardous material" or "hazardous substance" means any hazardous substance as defined in section 128D-1, HRS, and designated in section 11-451-5.

"HEPCRA" means the Hawaii emergency planning and community right-to-know act.

"Material Safety Data Sheet" or "MSDS" means the sheet required to be developed under section 1910.1200(g) of Title 29 of the Code of Federal Regulations.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, county, commission, or, to the extent the United States or an interstate body is subject to this chapter, the United States or the interstate body.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any hazardous substance, or pollutant or contaminant into the environment, including the abandonment or discarding of barrels, containers, and other closed receptacles containing a hazardous substance, or pollutant or contaminant. The term does not include:

- (1) Any release that results in the exposure of persons solely within a workplace, with respect to claims that these persons may assert against their employer;
- (2) Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;
- (3) Release of a source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended, 42 U.S.C. section 2011 et seq., if this release is subject to requirements with respect to financial protection established by the Nuclear

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Regulatory Commission under 42 U.S.C. section 2210;

- (4) Any release resulting from the normal application of fertilizer;
- (5) Any release resulting from the legal application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended; or
- (6) Any release from sewerage systems collecting and conducting primarily domestic wastewater.

"Reportable quantity" means the quantity of a hazardous material stated on the various lists of hazardous substances as defined in section 128D, HRS, and designated in section 11-451-6.

"SARA Title III" means Title III of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. sections 11001-11050.

"Threshold planning quantity" or "TPQ" means the threshold planning quantity for an "extremely hazardous substance" as defined in Title 40 Code of Federal Regulations part 355.

"Toxic chemical" means a substance appearing on the list of chemicals described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, as set forth in 40 Code of Federal Regulations part 372. [Eff \_\_\_\_\_] (Auth: HRS §128E-1) (Imp: HRS §128E-1)

§11-453-3 Incorporations by reference. (a) Reference to Title 40 Code of Federal Regulations (40 CFR) shall mean (unless otherwise specifically provided) the Superfund, Emergency Planning, and Community Right-to-Know Act Regulations, ~~July 2009~~. [Eff \_\_\_\_\_] (Auth: HRS §§128E-1, 128E-2) (Imp: HRS §§128E-1, 128E-2).

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Comment [RS4]: Date still accurate?

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§11-453-4 Electronic business. (a) The intent of this section is to authorize and promote the development of electronic business by the commission and the committees, and the section shall be interpreted broadly.

(b) The commission and committees may each separately or jointly authorize the submission of reports, notifications, and payments electronically, when and under those conditions that the commission or committee considers appropriate. The commission may specify whether the electronic notification or report may replace or supplements the existing paper notices or reports. The commission and committees will provide notice to public of the availability and use of electronic business methods to satisfy reporting or other requirements under this chapter.

(c) The commission and committees may each separately or jointly authorize the submission of a single electronic report or notification to meet multiple reporting or notification requirements by different jurisdictions, when and under those conditions that the commission or committee considers appropriate.

- (1) This "one stop" operation includes both reports and notifications sent first directly to the commission or a committee, and reports and notifications sent first directly to another entity beside the commission or a committee.  
[Comment: For example, the commission, committees, and department may implement and update automated information exchange systems for hazardous chemical inventory reporting as discussed in section 11-453-27(c) and toxic chemical release reporting and information exchanges described under subchapter 7.]
- (2) The commission and committees may enter agreements with other entities for coordinated and integrated electronic business.

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(d) The commission and committees may use the provisions for electronic and facsimile reporting and notification in section 11-1-4.

(e) The commission and committees shall comply with the U.S. Environmental Protection Agency Cross-Media Electronic Reporting Rule, 40 C.F.R. part 3, to the extent that it applies to commission or committee electronic business. [Eff ]  
(Auth: HRS §§128E-1, 128E-2, 128E-3) (Imp: HRS §§128E-1, 128E-2).

## SUBCHAPTER 2

### STATE EMERGENCY RESPONSE COMMISSION

§11-453-5 Establishment of state emergency response commission. (a) The Hawaii state emergency response commission is created pursuant to section 128E-2(a), HRS, and is placed within the department for administrative purposes and carries out the requirements of this chapter. [Eff ]  
(Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-6 Commission members and their responsibilities. (a) The governor shall appoint the commission members as described in section 128E-2(b), HRS.

(b) Commission members are subject to the requirements of section 128E-2(c) to (g), HRS. [ ]  
(Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-7 Duties and responsibilities. (a) The commission shall perform duties and responsibilities as described in section 128E-2(g), HRS. [Eff ]  
(Auth: HRS §128E-2) (Imp: HRS §128E-2)

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§11-453-8 Appointment of hearing officers. (a)  
In addition to other specific powers provided in this chapter, the commission may appoint, without regard to section 76 HRS, hearing officers to conduct public participation activities, including public hearings and public information meetings. [Eff ]  
(Auth: HRS §§128E-2, 128E-3) (Imp: HRS §§128E-2, 128E-3)

§11-453-9 Immunity from civil liability. (a)  
No commission member shall be liable for the death of or any injury to persons, the loss of or damage to property, or any civil damages, resulting from any act or omission arising out of the performance of the functions, duties, and responsibilities of the commission, except for acts or omissions that constitute willful misconduct.

(b) No employee, representative, or agent of a state or county agency, or persons requested by a state or county agency to engage in any emergency service or response activities involving a hazardous material release at a facility or transportation accident site, shall be liable for the death of or any injury to persons, or the loss of or damage to property, resulting from that hazardous material release, except for any acts or omissions that constitute willful misconduct. [Eff ]  
(Auth: HRS §128E-10) (Imp: HRS §128E-10)

### SUBCHAPTER 3

#### LOCAL EMERGENCY PLANNING COMMITTEES

§11-453-10 Establishment of local emergency planning districts. Each county is designated as an emergency planning district for the purposes of this chapter; provided that the department is responsible for Kalawao County. [Eff ] (Auth: HRS §128E-4) (Imp: HRS §128E-4)



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§11-453-11 Establishment of local emergency planning committees. (a) Local emergency planning committees are created pursuant to section 128E-5(a), HRS. The committees shall be subject to the requirements of this chapter and section 303 of the EPCRA, 42 U.S.C. section 11003. [Eff ]  
(Auth: HRS §128E-5) (Imp: HRSS128E-5)

§11-453-12 Committee members. (a) The commission shall appoint the committee members as described in section 128E-5(b) to (e), HRS. [Eff ]  
(Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-13 Duties and responsibilities. (a) Each committee shall perform duties and responsibilities as described in section 128E-5(f), HRS. [Eff ] (Auth: HRS §128E-5)  
(Imp: HRS §128E-5)

§11-453-14 Funding. (a) Administrative and operational expenses of a committee may be paid by the State. Funding for operation and administration of committees shall come from the local emergency response planning committee account within the environmental response revolving fund established under section 128D-2, HRS.

(b) Each committee must establish an account with the finance department of the local government in their planning district in order to receive funding.

(c) Funding shall be used to fulfill the duties and responsibilities of the committee as described in section 11-453-13 of this subchapter. [Eff ]  
(Auth: HRS §§128E-5, 128E-8) (Imp: HRS §§128E-5, 128E-8)

§11-453-15 Immunity from civil liability. (a) No committee member shall be liable for the death of

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or any injury to persons, the loss of or damage to property, or any civil damages, resulting from any act or omission arising out of the performance of the functions, duties, and responsibilities of the committee, except for acts or omissions that constitute willful misconduct.

(b) No employee, representative, or agent of a state or county agency, or persons requested by a state or county agency to engage in any emergency service or response activities involving a hazardous material release at a facility or transportation accident site, shall be liable for the death of or any injury to persons, or the loss of or damage to property, resulting from that hazardous material release, except for any acts or omissions that constitute willful misconduct. [Eff ]  
(Auth: HRS §128E-10) (Imp: HRS §128E-10)

#### SUBCHAPTER 4

#### EMERGENCY PLANNING

§11-453-16 Facilities subject to emergency planning requirements. (a) The requirements of this subchapter apply to:

- (1) Each owner or operator of a facility that stores, uses, or manufactures any hazardous substance and at which there is present an amount of any extremely hazardous substance equal to or in excess of its threshold planning quantity; and
- (2) Each owner or operator of a facility that has been designated by the commission or the Governor after public notice and opportunity for comment. ~~and~~

~~(3)~~  
(b) In the interest of public health and safety of emergency first responders and facility occupants, the owner or operator of each facility temporarily storing any extremely hazardous substance in excess of its threshold planning quantity or hazardous material

**Comment [S5]:** Revised 11-453-16 to address comment from A&B concerning legal authority under HEP CRA to require facilities to report EHS and hazardous chemicals that are under active shipping papers. Based on the language in Act 087, specifically amended 128E-6(a)(1), it does not appear HEP CRA provides authority to require reporting of those EHS and hazardous chemicals under active shipping papers. While states may be more stringent than the federal EPCRA, Act 087 (amended 128E-6(a)(1) specifically refers to sections 302 and 304 of federal EPCRA and therefore, the HEP CRA rules for emergency planning must be consistent with federal EPCRA which does not require reporting of such chemicals while under active shipping papers (transportation exemption). Note Section 327 of EPCRA exempts from any Title III reporting requirement (other than the Section 304 notification obligation) substances or chemicals in transportation and/or being stored incident to transportation, including the transportation and distribution of natural gas.

As a result, the rule requests voluntary compliance with emergency planning requirements for those chemicals that are stored for more than 72 hours while under active shipping papers. Note, if the chemicals have reached their arrival destination, they are no longer considered under active shipping papers.

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greater than 10,000 pounds under active shipping papers for a period longer than 72 hours is encouraged to comply with the emergency planning requirements in §11-453-17.

(c) ~~(b)~~ For purposes of this subchapter, an amount of any extremely hazardous substance means the total amount of an extremely hazardous substance present at any one time at a facility at concentrations greater than one percent by weight, regardless of location, number of containers, or method of storage. Methods for calculation of quantities are described in section 11-453-18. [Eff ] (Auth: HRS §§128E-6, 128E-7, 128E-13) (Imp: HRS §§128E-6, 128E-7, 128E-13)

§11-453-17 Emergency planning requirements. (a) The owner or operator of a facility subject to emergency planning requirements of this subchapter shall:

- (1) Designate a facility representative who will serve as a facility emergency coordinator and work with the committee to implement local emergency planning.
- (2) Notify the committee and commission within sixty days of the facility first being subject to regulation under this rule.
- (3) On or before March 1 of each year, inform the committee of any changes occurring at the facility which may be relevant to emergency planning, including whether the facility ceases to meet the minimum emergency planning thresholds described in section 11-453-19.
- (4) Upon request of the committee having jurisdiction over the facility, promptly provide to the committee any information necessary for development or implementation of the chemical emergency response and preparedness plan for the emergency planning district. [Eff ] (Auth: HRS §128E-6) (Imp: HRS §128E-6)

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§11-453-18 Calculation of quantities for comparison with threshold planning quantities for solids and mixtures. (a) If a container or storage vessel holds a mixture or solution of an extremely hazardous substance, then the concentration of extremely hazardous substance, in weight per cent (greater than one per cent), shall be multiplied by the mass (in pounds) in the vessel to determine the actual quantity of extremely hazardous substance therein. If the concentration of an extremely hazardous substance is less than or equal to one percent in the mixture, you do not have to count that extremely hazardous substance.

(b) You must aggregate (i.e., add together) the amounts of each extremely hazardous substance at your facility to determine if a threshold planning quantity is present. This means that, for a particular extremely hazardous substance, you must determine the total amount present at any one time at your facility by adding together the quantity of pure extremely hazardous substance and the quantity contained in all mixtures, regardless of location, number of containers, or method of storage. You do not have to count an extremely hazardous substance in a mixture if the concentration of that extremely hazardous substance is less than or equal to one percent.

(c) Extremely hazardous substances that are solids are subject to either of two threshold planning quantities as shown in 40 CFR part 355 appendices A or B (e.g., lower threshold planning quantity/upper threshold planning quantity). The lower threshold planning quantity applies only if the solid exists in powdered form and has a particles size less than one hundred microns; or is handled in solution or in molten form; or meets the criteria for a National Fire Protection Association rating of two, three or four for reactivity. If the solid does not meet any of these criteria, it is subject to the upper threshold planning quantity as shown in 40 CFR part 355 appendices A or B.

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(d) The one hundred micron level may be determined by multiplying the weight per cent of solid with a particle size less than one hundred microns in a particular container by the quantity of solid in the container.

(e) The amount of solid in solution may be determined by multiplying the weight percent of solid in the solution in a particular container by the quantity of solution in the container.

(f) The amount of solid in molten form must be multiplied by 0.3 to determine whether the lower threshold planning quantity is met.

(g) For purposes of this rule "mixture" means a heterogeneous association of substances where the various individual substances retain their identities and can usually be separated by mechanical means. Includes solutions or compounds but does not include alloys or amalgams. [Eff ] (Auth: HRS §128E-6). (Imp: HRS §128E-6)

§11-453-19 List of extremely hazardous substances and their threshold planning quantities. Extremely hazardous substances and their applicable threshold planning quantities and reportable quantities are those substances and quantities listed at 40 CFR part 355, appendices A and B. [Eff ] (Auth: HRS §§128E-1, 128E-6) (Imp: HRS §§128E-1, 128E-6)

#### SUBCHAPTER 5

#### EMERGENCY RELEASE NOTIFICATION

§11-453-20 Facilities subject to emergency release notification. (a) The requirements of this subchapter apply to any facility at which:

- (1) A hazardous chemical is produced, used or stored; and
- (2) There is release of a reportable quantity of any hazardous substance or extremely

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hazardous substance within any 24-hour period. Certain releases are exempted from these requirements. Exempted releases are listed in section 11-453-20(b).

- (b) This subchapter does not apply to:
  - (1) Any release which results in exposure to persons solely within the boundaries of the facility;
  - (2) Any release which is a federally permitted release as defined in section 101 (10) of Comprehensive Emergency Response, Compensation and Liability Act;
  - (3) Any release that is continuous and stable in quantity and rate under the definitions in 40 CFR 302.8(b). Exemption from notification under this subchapter does not include exemption from:
    - (A) Initial notifications as defined in 40 CFR 302.8 (d) and (e);
    - (B) Notification of a "statistically significant increase", defined in 40 CFR 302.8(b) as any increase above the upper bound of the reported normal range, which is to be submitted to the community emergency coordinator for the committee for any area likely to be affected by the release and to the commission likely to be affected by the release;
    - (C) Notification of a "new release" as defined in 40 CFR 302.8(g)(1); or
    - (D) Notification of a change in the normal range of the release as required under 40 CFR 302.8(g)(2).
  - (4) Any release of a pesticide product exempt from Comprehensive Emergency Response, Compensation and Liability Act section 103(a) reporting under section 103(e) of Comprehensive Emergency Response, Compensation and Liability Act;
  - (5) Any release not meeting the definition of release under section 101(22) of

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Comprehensive Emergency Response,  
Compensation and Liability Act, and  
therefore exempt from section 103(a)  
reporting; and

- (6) Any radionuclide release which occurs:
  - (A) Naturally in soil from land holdings such as parks, golf courses, or other large tracts of land.
  - (B) Naturally from land disturbance activities, including farming, construction, and land disturbance incidental to extraction during mining activities, except that which occurs at uranium, phosphate, tin, zircon, hafnium, vanadium, monazite, and rare earth mines. Land disturbance incidental to extraction includes: land clearing; overburden removal and stockpiling; excavating, handling, transporting, and storing ores and other raw (not beneficiated or processed) materials; and replacing in mined-out areas coal ash, earthen materials from farming or construction, or overburden or other raw materials generated from the exempted mining activities.
  - (C) From the dumping and transportation of coal and coal ash (including fly ash, bottom ash, and boiler slags), including the dumping and land spreading operations that occur during coal ash uses.
  - (D) From piles of coal and coal ash, including fly ash, bottom ash, and boiler slags.
- (7) Any release in amounts less than 1,000 pounds per 24 hours of:
  - (A) Nitrogen oxide to the air that is the result of combustion and combustion-related activities.

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- (B) Nitrogen dioxide to the air that is the result of combustion and combustion-related activities. [Eff ] (Auth: HRS §§128E-6, 128E-7, 128E-13) (Imp: HRS §§128E-6, 128E-7, 128E-13)

§11-453-21 Designation of extremely hazardous substances and hazardous substances. (a) Purpose. This section designates the extremely hazardous substances and hazardous substances subject to release notification requirements contained in section 11-453-23.

(b) Extremely hazardous substances. Extremely hazardous substances are those substances and quantities listed at 40 CFR part 355, appendices A and B, as amended.

(c) Hazardous substances. Hazardous substances are defined in section 128D-1, HRS, and designated in section 11-451-5. [Eff ] (Auth: HRS §§128D-1, 128E-1, 128E-6, 128E-7) (Imp: HRS §§128D-1, 128E-1, 128E-6, 128E-7)

§11-453-22 Determination of reportable quantities. (a) Purpose. This section designates the reportable quantities for the extremely hazardous substances and hazardous substances designated pursuant to section 11-453-21.

(b) The reportable quantities for extremely hazardous substances will be their respective reportable quantities ~~threshold planning quantities~~ as defined in 40 CFR part 355, appendices A and B, as amended.

(c) The reportable quantities for hazardous substances will be the quantity of a hazardous material stated in the various lists of hazardous substances as defined in section 128D-3, HRS, and designated in section 11-451-6. [Eff

] (Auth: HRS §§128E-1, 128E-6, 128E-7) (Imp: HRS §§128E-1, 128E-6, 128E-7)

**Comment [S6]:** Corrected text to indicate reportable quantities as suggested by A&B comments.



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§11-453-23 Release notification requirements.

(a) The owner or operator of a facility shall make two separate notifications to comply with the emergency release notification requirements of this subchapter: an immediate notification, and as soon as practicable thereafter a written follow-up emergency notification (or notifications, as more information becomes available). The owner or operator of a facility must provide the immediate release notification and written follow-up emergency notification to the commission, committee, and the fire department of any area likely to be affected by the release. Procedures for notifying of a release that occurs during transportation or from storage incident to transportation are set forth in section 11-453-23(d).

(b) The immediate notification required under this section shall include the following to the extent known at the time of notice and so long as no delay in notice or emergency response results:

- (1) The name (trade and chemical) and chemical abstract service registry number, if available, of the hazardous substance that has been released;
- (2) An indication of whether the substance is an extremely hazardous substance
- (3) The approximate quantity of the hazardous substance, extremely hazardous substance, pollutant, or contaminant that has been release;
- (4) The reportable quantity or threshold planning quantity that is the basis for notification.
- (5) The location of the release;
- (6) A brief description of the release including the medium or media into which the release occurred or is likely to occur, and the cause of the release;
- (7) The date, time and duration of the release, and the date and time that the person in

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- charge of the facility where the release occurred, obtained knowledge of the release;
- (8) The source of the release;
  - (9) The name, address and telephone number of the caller;
  - (10) The name, address, and telephone number of the owner and operator of the facility where the release has occurred;
  - (11) The name, address, and telephone number of a contact person at the facility where the release has occurred;
  - (12) Measures taken or proposed to be taken in response to the release as of the time of the notification, and any appropriate information relating to the ability of the owner or operator of the facility where the release has occurred to pay for or perform any proposed or require response actions;
  - (13) The names of other federal, state, or local government agencies that have been notified of the release;
  - (14) Any known or anticipated acute or chronic health risks associated with the release and where appropriate, advice regarding medical attention necessary for exposed individuals; and
  - (15) Any other information which is relevant to assessing the hazard posed by the release, including but without limitation potential impacts to public health or welfare, or the environment.

(c) Within 30 days after a release which requires notice under subsection (b) such owner or operator shall provide a written follow-up notice as established by the department. The written form for the follow-up notice will be available from the department of health, hazard evaluation and emergency response office.

(d) An owner or operator of a facility from which there is a transportation-related release may meet the requirements of this subchapter by providing the information indicated in subsection (b) to the 911

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operator, or in the absence of a 911 emergency telephone number, to the operator. For purposes of this subsection, a transportation-related release means a release during transportation or storage incident to transportation if the stored substance is moving under active shipping papers and has not reached the ultimate consignee. [Eff

] (Auth: HRS §§128E-6, 128E-7) (Imp: HRS §§128E-6, 128E-7)

§11-453-24 Applicability of other release reporting requirements to facilities subject to emergency release notification requirements. Facilities subject to the emergency release notification requirements of this subchapter must also comply with the release notification requirements for all other applicable statutes and rules including but not limited to hazardous substances established in chapter 451, subchapter 2 of Hawaii's state contingency plan (sections 11-451-4 through 11-451-7) and reporting requirements established under 40 CFR part 302, as necessary. [Eff ]  
(Auth: HRS §§128D-7, 128E-6, 128E-7) (Imp: HRS §§128D-7, 128E-6, 128E-7)

#### SUBCHAPTER 6

#### HAZARDOUS CHEMICAL REPORTING

§11-453-25 Facilities subject to hazardous chemical reporting requirements. (a) The requirements of this subchapter apply to each owner or operator of a facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970, as amended, 15 United States Code section 651 et seq. and regulations promulgated under that Act; and meets any of the minimum threshold levels described in subsection (b) of this section.

Comment [S7]: Added text to make consistent with Act 087 amendments to 128E-6(a)(2).

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(b) Except as provided in paragraph (b)(6) of this section, the minimum threshold levels for reporting under this subchapter shall be as specified in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5):

- (1) All hazardous substances, except for extremely hazardous substances, present at the facility in amounts not less than 10,000 pounds;
- (2) All extremely hazardous substances present at the facility in amounts not less than 500 pounds, or the threshold planning quantity for that substance, whichever is less. Extremely hazardous substances are described in section 11-453-21(b) of this chapter. Threshold planning quantities for extremely hazardous substance are shown in 40 CFR part 355 appendices A or B. Some extremely hazardous substances may have two threshold planning quantities (e.g., lower threshold planning quantity/upper threshold planning quantity, use the lower of those quantities if it is less than 500;
- (3) The minimum threshold for reporting of gasoline (all grades combined) that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calendar year with all applicable underground storage tank requirements (40 CFR part 280 or requirements of the state underground storage tank program approved by the U.S. Environmental Protection Agency under 40 CFR part 281), is 75,000 gallons (or approximately 283,900 liters). For purposes of this part, retail gas station means a retail facility engaged in selling gasoline or diesel fuel principally to the public, for motor vehicle use on land.
- (4) The minimum threshold for reporting of diesel fuel (all grades combined) that was in tank(s) entirely underground, at a retail

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Comment [RS8]: and/or is not allowed. replaced with "or" okay?

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gas station that was in compliance at all times during the preceding calendar year with all applicable underground storage tank requirements (40 CFR part 280 or requirements of the state underground storage tank program approved by the U.S. Environmental Protection Agency under 40 CFR part 281), is 100,000 gallons (or approximately 378,500 liters).

- (5) The minimum threshold for reporting of all other hazardous chemicals is 10,000 pounds (or 4,540 kgs.). Hazardous chemicals are defined in section 11-453-2 of this chapter.
- (6) The minimum threshold for reporting in response to requests for submission of [a] material safety data sheet or a tier II form from the commission or committee or fire department having jurisdiction over the facility shall be zero.

Comment [S9]: Changed "an" to "a".

- (c) The requirements of this subchapter do not apply to hazardous chemicals, hazardous substances, or extremely hazardous substances while they are in transportation under active shipping papers, including during storage incident to transportation, consistent with EPCRA. [Eff ] (Auth: HRS §§128E-6, 128E-13) (Imp: HRS §§128E-6, 128E-13)

Comment [S10]: In response to A&B comment, added requirement to clarify that reporting is not required for hazardous chemical in transportation under active shipping papers.

§11-453-26 Submittal of material safety data sheets. (a) An owner or operator described in section 11-453-25 shall complete a list of hazardous chemicals present at the facility by March 1 of each year and submit a material safety data sheet for such a hazardous chemical to the commission, committee or fire department having jurisdiction over the facility not more than thirty days after a request.

§11-453-27 Submittal of State of Hawaii chemical inventory form (tier II). (a) An owner or operator described in section 11-453-25 shall submit a State of

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Hawaii chemical inventory (tier II) form using options provided by the department of health, hazard evaluation and emergency response office by March 1 of each year for all hazardous substances, extremely hazardous substances, and hazardous chemicals present at the facility at any one time in amounts equal to or greater than their respective thresholds in the proceeding calendar year.

(b) A State of Hawaii chemical inventory (tier II) form shall be submitted to the department of health, hazard evaluation and emergency response office, committee and fire department having jurisdiction over the facility.

(c) The department of health, hazard evaluation and emergency response office, committee and fire department may implement an automated information exchange system so that the submission of a State of Hawaii chemical inventory (tier II) form to one agency satisfies the requirement of submission to all.

(d) The owner or operator of a facility that has submitted an inventory form under this section shall allow on-site inspection by the fire department having jurisdiction over the facility upon request of the department, and shall provide to the department specific location information on hazardous substances, extremely hazardous substances, and hazardous chemicals at the facility. [Eff ]

(Auth: HRS §128E-6) (Imp: HRS §128E-6)

§11-453-28 Submittal of tier II forms by request.

The owner or operator of a facility described in section 11-453-25 shall submit a tier II form to the department of health, hazard evaluation and emergency response office, committee, or the fire department having jurisdiction over the facility upon request of such persons. The tier II form shall be submitted within 30 days of the receipt of each request. [Eff ]

(Auth: HRS §128E-6) (Imp: HRS §128E-6)

**Comment [S11]:** Added text to address EPA's Region ('s comment that the reporting requirement be consistent with federal EPCRA. Specifically, an owner or operator must submit a Tier II report by March 1 of the current year based on the amount of hazardous chemicals and extremely hazardous substances at the facility that were above their respective thresholds in the proceeding year.

**Comment [S12]:** Added reference to State of Hawaii form for consistency with 11-453-27(a).

**Comment [S13]:** Added reference to State of Hawaii chemical inventory form for consistency with 11-453-27(a).



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§11-453-29 Submittal of emergency response plans. (a) An owner or operator described in section 11-453-25 shall submit an emergency response plan along with their submittal of the state of Hawaii chemical inventory form (tier II) to the department of health, hazard evaluation and emergency response office, committee, and the fire department having jurisdiction over the facility.

(b) At a minimum, the emergency response plan should include:

(1) A diagram of the facility with the following information:

- (A) Emergency contact information for the facility;
- (B) Facility entrances;
- (C) Facility emergency exits;
- (D) Location of areas used for storage of extremely hazardous substances and hazardous substances;
- (E) If installed, location of any mitigating measures such as, but not limited to:
  - (i) Fire extinguishers;
  - (ii) Fire hoses;
  - (iii) Sprinkler systems;
  - (iv) Smoke detectors; and
  - (v) Emergency warning systems.

(c) After the first submission of an emergency response plan, resubmission is only required when changes are made to any of the minimum elements of the plan described in section 11-453-29(b). [Eff

] (Auth: HRS §128E-6)

(Imp: HRS §128E-6)

§11-453-30 Notification that a facility is no longer subject to hazardous chemical reporting requirements required to report hazardous substance, extremely hazardous substance, or hazardous chemical reporting is below reporting threshold. If a facility ceases to meet the minimum reporting thresholds of

**Comment [S14]:** Revised text to clarify that notification is required when a facility no longer meets a minimum reporting threshold for any hazardous substance, extremely hazardous substance, or hazardous chemical, such that the facility would no longer be submitting the annual chemical inventory form.

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~~section 11-453-25(b) for hazardous substances, extremely hazardous substances, and hazardous chemical reporting with regard to a specific hazardous substance, extremely hazardous substance, or hazardous chemical, the owner or operator of the facility will submit a notice to the commission, committee, and fire department indicating that the specific hazardous substance, extremely hazardous substance, or hazardous chemical is no longer present in a quantity that meets the minimum reporting threshold. The owner or operator a facility will submit a notice to the commission, committee, and fire department indicating that the facility is no longer subject to the hazardous chemical reporting requirements of this subchapter when the facility no longer meets a minimum reporting threshold in section 11-453-25(b) for any hazardous substance, extremely hazardous substance or hazardous chemical. [Eff \_\_\_\_\_] (Auth: HRS §128E-6) (Imp: HRS §128E-6)~~

**Comment [S15]:** Revised text to clarify that a facility must report to the commission, committee, and fire department that it is no longer subject to filing a Tier II report because the facility no longer meets a threshold for reporting any hazardous substance, extremely hazardous substance, and hazardous substance chemical.

SUBCHAPTER 7

TOXIC CHEMICAL REPORTING

§11-453-31 Facilities subject to toxic chemical release reporting . (a) The owner or operator a facility subject to toxic chemical release recordkeeping and reporting as described in 40 CFR part 372 shall comply with the requirements of such part

(b) Facilities that submit toxic chemical release data to the U.S. Environmental Protection Agency via the Environmental Protection Agency's Central Data Exchange (using the toxic release inventory-made easy tool) for the first time, as paper forms or via diskette shall also submit toxic chemical release data to the department.

(c) After the first year of usage, facilities that submit toxic chemical release data to the U.S. Environmental Protection Agency via the Environmental Protection Agency's Central Data Exchange (using the





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(c) The department, with the assistance of the department of budget and finance and department of accounting and general services, shall prepare a report for the legislature concerning the amount of monies collected during the preceding fiscal year, the amount of monies collected to date during the current fiscal year, and the amount of monies to be collected during the upcoming fiscal year, pursuant to sections 128E-9 and 128E-11, HRS. The department shall submit the foregoing report to the legislature not less than twenty days prior to the convening of each regular session of the legislature. [Eff \_\_\_\_\_ ]  
(Auth: HRS §128E-8) (Imp: HRS §128E-8)

#### SUBCHAPTER 9

#### COMMUNITY RIGHT-TO-KNOW REQUESTS

§11-453-34 Receiving and processing community right-to-know requests. (a) To obtain information regarding a specific hazardous chemical or extremely hazardous substance at a specific facility, local emergency response plan, or notice regarding a reportable toxic chemical release, a person shall submit a written request to the committee or commission. The committee will have primary responsibility for processing such requests. If a request is submitted to a committee, the committee is encouraged to forward a copy of the request to the commission so commission staff can coordinate a response to the request.

(b) The committee or commission shall respond to a written request for information. The response shall advise the person making the request of one of the following:

- (1) The time and location at which the person may inspect and copy the requested information;
- (2) That additional information is needed to process the request;

Comment [S16]: Deleted "As required by EPCRA,".

- (3) That the requested information is not available but the commission or committee will ask the owner or operator of the facility to provide the information; or
- (4) That the request is denied because:
  - (A) The requested information does not exist;
  - (B) The owner or operator of the facility is not required to provide the information; or
  - (C) The committee or commission determined that disclosing the information will impair its ability to protect public health or safety and the public interest in nondisclosure outweighs the public interest in disclosure.

(c) The committee or commission shall charge the person making a request under this subchapter the cost of reproducing the information requested. The commission shall deposit the funds received under this subchapter in the local emergency response planning committee's account that is discussed in subchapter 8 of this chapter.

(d) The committee or commission will provide all information to any person unless that information is protected from disclosure by federal or state law or the committee or commission makes a finding in accordance with section 11-453-34(b)(4)(C). [Eff ] (Auth: HRS §§ 92-21, 92F, 128E-2, 128E-3, 128E-13) (Imp: HRS §§92-21, 92F, 128E-2, 128E-3, 128E-13)

§11-453-35 Trade Secrecy Claims. (a) Any person asserting trade secrecy claims for chemical identity information collected under this chapter shall follow the procedures established by the U.S. Environmental Protection Agency described at 40 CFR part 350 [Trade Secret Claims for Emergency Planning and Community Right-to-Know Act Information: and Trade Secret Disclosures to Health Professionals].

**Comment [S17]:** Inserted "or" to indicate that there are three possible reasons for denying a request. Note that new paragraph (5) will indicate that information will not be disclosed if it is protected by federal or state disclosure laws. Also see comments 3 and 4 below.

**Comment [S18]:** In response to Kathy's comment, removed subparagraph (d) and inserted the reference to federal and state disclosure laws in new paragraph (5) located below. The effect of this is not to require the Committee or Commission to explain in its response why or how federal or state law prohibits disclosure of such information.

**Comment [S19]:** In response to Kathy's comment, created new paragraph (d) to indicate that information will not be released to the public if it is not subject to disclosure under federal or state law (e.g., under federal EPCRA section 312 and 40 CFR 370.30, facilities may request withholding location information for specific hazardous chemicals in the Tier II reports).

**Comment [S20]:** Revised earlier draft (Nov. 17 a.m.) so the sentence structure is proactive and not negative.

**Comment [S21]:** Deleted "All materials to be submitted under a Claim of Confidentiality shall be submitted to" and replaced with new text to clarify that this section only addresses procedures which a submitted must follow in order to file a trade secrecy claim for chemical identity information collected under various rules established in this Chapter (emergency planning section 302EPCRA, hazardous chemical inventory reporting (311 and 312 of EPCRA and toxic chemical reporting (313 EPCRA). Trade secrecy claims are submitted to EPA only, however a sanitized version must be submitted to the Commission.

**Comment [S22]:** Deleted original text "according to procedures", when revising the opening sentence.

**Comment [S23]:** Deleted "or according to state law, as applicable". This provision is not necessary because trade secrecy claims are made to EPA only. Note that state confidentiality and trade secrecy laws are already addressed (and therefore do not need to be cited here) because they still apply and under the substantiation provisions of federal EPCRA (and EPA's regulations in 40 CFR part 350), a facility will not be able to justify withholding the information if the state law prohibits claims of trade secrecy (see July 29, 1988 Federal Register, page 28795).

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(b) A copy of the [redacted] version of the documents, and a copy of page 1 of the accompanying U.S. Environmental Protection Agency substantiation form, submitted to the U.S. Environmental Protection Agency shall be submitted to the commission.

(c) Public petitions requesting disclosure of chemical identity claimed as trade secret shall be made in accordance with procedures described in 40 CFR 350.15 and 40 CFR 350.16. [Eff (Auth: HRS §§92F, 128E-2, 128E-6, 128E-13) (Imp: HRS §§92F, 128E-2, 128E-6, 128E-13)]

**Comment [S24]:** No change made here, but I am providing a comment to note that EPA rules specified the term "sanitized" which is what we used originally to describe the version (documents) the Commission would receive from EPA that do not include information claimed as a trade secret. At the request of Larry Lau, we changed "sanitized" to "redacted".

**Comment [S25]:** Deleted "or set forth under state law, as applicable" because disclosure of chemical identity claimed as trade secrets under federal EPCRA and EPA rules is also governed by federal EPCRA and EPA regulations. Please note, as discussed in an earlier comment, that if State law already prohibits claims of trade secrecy for information that a submitted must also report under federal EPCRA (Title III), then a facility will not be able to justify withholding the information under the substantiation provisions of federal EPCRA and corresponding EPA rules in 40 CFR part 350.

#### SUBCHAPTER 10

#### ENFORCEMENT

§11-453-36 Violations. (a) Whenever, on the basis of information available to the commission finds that any person has violated or is in violation of the Hawaii emergency planning and community right-to-know act, 128E, HRS, or any rule or regulation adopted pursuant thereto, the commission:

(1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which the facility shall submit the required reports, forms, and notifications;

(2) May require the alleged violator or violators to appear before the commission for a hearing at a time and place specified in the notice or to be set later, and to answer the charges complained of; and

★(3) May impose penalties as provided in section 128E-11, HRS and section 11-453-37 by sending a written notice describing the violation, either by certified mail or personal service, to the alleged violator or violators. The exercise of any of the



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remedies provided in this subchapter shall not preclude recourse to any other remedy so provided. [Eff ] (Auth: HRS §128E-12) (Imp: HRS §128E-12)

11-453-37 Penalties and fines. (a) Any person who violates any of the emergency reporting, planning, or notification requirements of sections 128E-6, and 128E-7, HRS or rules or regulations adopted pursuant, or fails to pay the fees required by section 128E-9, HRS and section 11-453-32, shall be subject to a civil penalty of not less than \$1,000 but not more than \$25,000 for each separate offense. Each day of each violation shall constitute a separate offense.

(b) Any person who:

- (1) Knowingly fails to report the release of a hazardous substance or extremely hazardous substance, as required by section 128E-7, HRS and section 11-453-23, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$1,000 but not more than \$25,000 for each separate offense, or imprisoned for not more than one year, or both. For the purposes of this paragraph, each day of each violation shall constitute a separate offense; or
- (2) Intentionally obstructs or impairs, by force, violence, physical interference, or obstacle, a representative of the department, a hazardous materials response team, or a committee attempting to perform the duties and functions set forth in section 128E-5, HRS and subchapter 3, shall be guilty of a misdemeanor and, upon conviction, be fined not less than \$5,000 but not more than \$25,000 for each separate offense, or be imprisoned for not more than one year, or both.

(c) All monies collected under this subchapter shall be deposited in the state treasury and accrue to the credit of the fines and cleanup account within the

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state general fund. [Eff ] (Auth:  
HRS §128E-11) (Imp: HRS §128E-11)

§11-453-38 Inspection procedures. (a) Officials of the department are authorized to enter during normal operating hours any facility or other area of a facility; to inspect and investigate during normal operating hours within reasonable limits and in a reasonable manner, any such facility; and to review records which are directly related to the purpose of the inspection.

(b) Officials of the department may perform unannounced inspections at a facility or provide notice to the owner or operator of a facility prior to performing the inspection.

(c) Upon a refusal to permit officials of the department, in exercise of his or her official duties, to enter a facility during normal business hours, to inspect, to review records, or to question any owner, operator, or employee of the facility, the department shall take appropriate action, including compulsory process, if necessary. The term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent.

(d) Any permission by an owner or operator to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, civil administrative order, or penalty under section 128E, HRS.

(e) Officials of the department shall have authority to take or obtain photographs and copies of documents related to the purpose of the inspection.

(f) Officials of the department shall have the authority to privately question an owner, operator, or employee of a facility concerning matters regarding the Hawaii emergency planning and community right-to-know act to the extent they deem necessary for the conduct of an effective and thorough inspection. [Eff

] (Auth: HRS §§128E-2, 128E-12)  
(Imp: HRS §§128E-2, 128E-12)

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The adoption of chapter 11-453 shall take effect ten days after filing with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Chiyome Leinaala Fukino, M.D.  
Director of Health

APPROVED:

\_\_\_\_\_  
Linda Lingle  
Governor, State of Hawaii

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Filed

## Leonida, Sharon L

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**From:** Leonida, Sharon L  
**Sent:** Monday, May 24, 2010 9:18 AM  
**To:** Kathleen S Ho  
**Cc:** Lau, Laurence K.; Kawaoka, Keith E; Martin, Clarence (Curtis)  
**Subject:** FW: HRS 128E enforcement - Tier II

Kathy,

Could you please answer the questions that Larry has sent us below? In the e-mail that I sent to Larry before that, I tried to answer his questions. He would like the answers to give to the next HSERC meeting that will be held on June 10, 2010. Could you be there for questions. Thank You. Agenda attached.

Sharon



79 AGENDA.DOC

-----Original Message-----

**From:** Lau, Laurence K.  
**Sent:** Tuesday, January 12, 2010 5:00 PM  
**To:** Kawaoka, Keith E; Martin, Clarence (Curtis); Leonida, Sharon L; Kathy Ho  
**Cc:** Hasegawa, Jan K.  
**Subject:** HRS 128E enforcement - Tier II

Confidential attorney-client communication

Keith, Curtis, Sharon, Kathy:

1. Are rules required or desirable for enforcing 128E for Tier II submittals & fees? Can we enforce 128E directly? I'd like to hear from Kathy esp. as to her legal interpretation. I tend to interpret our statutes broadly.
  - a. And difference in our legal authority between past and current violations?
2. Jan & Lorrin Kim continue to track HAR 11-453 status. I think we may get Gov OK w/in 7 days.

Laurence K. Lau  
Deputy Director for Environmental Health  
State of Hawaii, Department of Health  
Ph. (808) 586-4424, Fax (808) 586-4368  
[Laurence.Lau@doh.hawaii.gov](mailto:Laurence.Lau@doh.hawaii.gov) <mailto:Laurence.Lau@doh.hawaii.gov>

*Hawaii's goals: 70% clean energy by 2030  
1990 GHG emission levels by 2020  
50% solid waste stream reduction by 2000.  
Print sparingly & 2-sided if you do.*

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**From:** Leonida, Sharon L  
**Sent:** Tuesday, January 12, 2010 4:01 PM  
**To:** Lau, Laurence K.  
**Cc:** Hasegawa, Jan K.; Martin, Clarence (Curtis); Kawaoka, Keith E  
**Subject:** Q: Tier II waiver of fees, penalties - HSERC issues

Afternoon Larry,

After checking 128E and talking to Curtis, we have come up with the following recommendations.



1. We want companies to come forward and be in compliance.
2. We do not have any **RULES**, therefore 128E is currently not effective. In the past we have told them they need to come into compliance or EPA may impose penalties.
3. **NEW RULES** are still waiting for Governor's signature and need to go to public hearing.
4. NOTHING in our present 128E requires that we have to collect for past filing years, but we may.

We should have the LEPCs encourage any company to fill in the Tier II forms that are available on our website or contact our office. We can also e-mail the packet to the LEPCs.

Sharon

## Leonida, Sharon L

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**From:** Lau, Laurence K.  
**Sent:** Monday, March 22, 2010 4:06 PM  
**To:** Leonida, Sharon L  
**Cc:** Martin, Clarence (Curtis)  
**Subject:** RE: Tier II waiver of fees, penalties - HSERC issue

Sharon:

OK. It's not that clear to me from the minutes, but I'll wait for the rules to be adopted. I should let next HSERC meeting know.

Laurence K. Lau  
Hawaii Deputy Director for Environmental Health  
Ph. (808) 586-4424  
Laurence.Lau@doh.hawaii.gov

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**From:** Leonida, Sharon L  
**Sent:** Monday, March 22, 2010 2:48 PM  
**To:** Lau, Laurence K.  
**Cc:** Martin, Clarence (Curtis)  
**Subject:** RE: Tier II waiver of fees, penalties - HSERC issue

Afternoon Larry,

I did not give any advice to the LEPC, just to tell the companies to report. I am attaching minutes #68, under the discussion in item # 7 & 8 it covers the questions you were asking. Kathy was present at the meeting, she told us that we could not do enforcement. The federal law has enforcement powers, under our HEPCRA law it asks for the \$100 fee, but with no rules we can't force them to pay.

Sharon

<< File: 68MIN.DOC >>

-----Original Message-----

**From:** Lau, Laurence K.  
**Sent:** Saturday, March 20, 2010 4:03 PM  
**To:** Leonida, Sharon L; Martin, Clarence (Curtis)  
**Cc:** Kawaoka, Keith E; Kathleen S Ho; Hasegawa, Jan K.  
**Subject:** Tier II waiver of fees, penalties - HSERC issue

Sharon, Curtis:

Regarding whether DOH could waive fees for past filing years, I'm sorry I didn't dig this out before the last meeting; I was supposed to get back to the HSERC.

Did you already pass the recommendation to the LEPCs?

Are you saying that the state has/had no legal authority under state law to enforce the fee requirement?  
Only federal law requires paying the fee?

LKL

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**From:** Leonida, Sharon L  
**Sent:** Tuesday, January 12, 2010 4:01 PM  
**To:** Lau, Laurence K.

**Cc:** Hasegawa, Jan K.; Martin, Clarence (Curtis); Kawaoka, Keith E  
**Subject:** Q: Tier II waiver of fees, penalties - HSERC issues

Afternoon Larry,

After checking 128E and talking to Curtis, we have come up with the following recommendations.

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3. **NEW RULES** are still waiting for Governor's signature and need to go to public hearing.
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We should have the LEPCs encourage any company to fill in the Tier II forms that are available on our website or contact our office. We can also e-mail the packet to the LEPCs.

Sharon