

**HSERC MEMBERS OR THE VOTING REPRESENTATIVES'
SIGN-IN SHEET FOR December 3, 2010**

Dean M Yoshizu
Dept. of Agriculture
Board of Agriculture

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

Henry Silva
Hawaii Representative/LEPC Chairperson
Hawaii County Fire Department

Captain Carter Davis
Honolulu Representative/LEPC Chairperson
Honolulu Fire Department

Albert Kauai
Kauai Representative/LEPC Chairperson
Kauai Fire Department

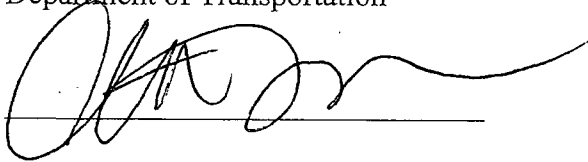
Scott Kekuewa
Maui Representative/LEPC Chairperson
Maui Fire Department

Deputy Director, Environmental Health
Department of Health

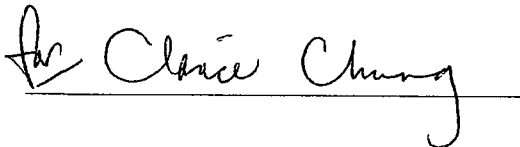
Katherine P. Kealoha
Director
Office of Environmental Quality Control

**HSERC MEMBERS OR THE VOTING REPRESENTATIVES' SIGN-IN
SHEET FOR December 3, 2010**

Chris Takeno
Hazardous Materials Officer
Department of Transportation



Edward Teixeira
Vice Director
State Civil Defense
Department of Defense



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

HSERC MEETING SIGN-IN SHEET FOR December 3, 2010

Name _____ Organization _____ Telephone # _____ Fax # _____ E-Mail _____

Beryl EKIMOT

Liz GALVES

CURTIS MARDIN

Alex Adams HFD 723-7440 aadams@hardsell.com

Sharon Leonida

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

December 2, 2010

TO: Mr. Clarence Martin, Acting Chair
Hawaii State Emergency Response Commission

FROM: Edward T. Teixeira 
Vice Director of Civil Defense

SUBJECT: HSERC Meeting – December 3, 2010

I am unable to attend the December 3, 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.

LINDA LINGLE
GOVERNOR OF HAWAII



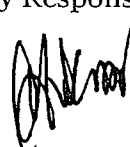
CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

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

In reply, please refer to:
File:

September 2, 2010

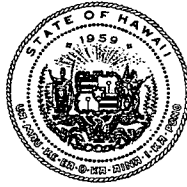
To: Curtis Martin
Environmental Health Specialist
Hazard Evaluation & Emergency Response Office

From: Chiyome Leinaala Fukino, M.D. 
Director of Health
and Chairperson
Hawaii State Emergency Response Commission

Re: Temporary appointment as Acting Chair to the Hawaii State
Emergency Response Commission (HSERC) on December 1, 2010

Pursuant to Chapter 128E-2 (c) & (d), I hereby designate you as the Acting Chair from December 1, 2010, and until someone is appointed as the next Chair or Vice-Chair.

c: HSERC



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 # 80

Thursday, September 23, 2010 from 9:00 a.m. to 12:00 a.m.
Department of Health
919 Ala Moana Boulevards, 5th Floor
Honolulu, Hawaii 96814

Attendees

Voting: Laurence Lau, Department of Health; Tin Shing Chao Department of Labor and Industrial Relations; Albert Kauai, Kauai County LEPC; Clarice Chung, State Civil Defense, Department of Defense; Henry Silva for Hawaii County LEPC; Chris Takeno, Department of Transportation; Dr. Deborah Juarez, Office of Public Health Studies

Non-Voting: Sharon Leonida, Department of Health, HEER Office; Keith Kawaoka, Department of Health, HEER Office; Terry Corpus, Department of Health, HEER Office; Beryl Ekimoto, Department of Health, HEER Office; Chris Curatilo, ERRG/EPA; Rosiland Selbach, Tetra Tech; Cynthia Pang, U.S. Navy

1. Larry Lau called the meeting to order 9:13 am
 - 1.1 Introduction of persons attending meeting.
 - 1.2 Approval of minute. **Tin Shing moved to adopt the minutes from meeting #79. Henry Silva Seconded. Minutes adopted.**
 - 1.3 Larry remarks: This is the last meeting that Larry will chair, retiring December 1, 2010. Thanked commission members from past years and present. Thanked staff from HEER. Starting official on December 1, Curtis Martin has been designated by the Director of Health to chair HSERC meeting. Larry checked, it is within the director's statutory power to do so. He will chair meeting until replacement is designated.
 - 1.4 October 6, "**Pacific States British Columbia Oil Spill Task Force**" will have their annual meeting in Honolulu, Hilton Hawaiian Village. Larry has not seen agenda, hopes they have participation from Gulf Oil Spill. Talk about what they observed, lessons learned.
 - 1.5 Tough economic government budget times may continue for a few years. Check to see what priorities are, work on important things and how we do things. Be the most effective and efficient for the dollar. Make sure we check on how we are doing and talk about it, keep improving as we deal with constraints. Larry is confident that this is being done. Thanked everyone, it was a pleasure and honor to work with everyone. It has taught him a lot and gave him support.

2. LEPC Updates

2.1 Hawaii: Henry Silva

- 2.1.1 LEPC meeting was August 26, 2010 at Hawaii County Civil Defense Building.
- 2.1.2 Tier II Awareness Project, run newspapers ads, public service announcement on radio to promote Tier II compliance.
- 2.1.3 Emergency Operations Plan is stuck in FEMA review, can't make HMEP Grant Fund cutoff date. Hawaii County and LEPC will finance project with a joint venture. Apologized for not using funds.
- 2.1.4 LEPC voted to provide training to hospital personnel for decontamination. Hospital has received equipment for decontamination, no training. Hawaii LEPC identified that as a need for hospital component of Emergency Response. Three days of training, anticipating thirty plus people. Will be held the first quarter of 2011, taught by Dr. John Bowen. Target is basis awareness of decontamination procedures, techniques. Use of Suits, PPE's, toxicologys; things that have been identified as important for hospital personnel receiving contaminated people. Cost of \$3,600 has been allowed. At the end of HMEP Grant Period next year, they would like to submit for reimbursement if any money left.
- 2.1.5 One Hazmat Incident, July 20, rollover of 9,000 gallons tank of Naphtha fuel on Hamakua Coast. Full breach of tank, 9,000 gallons spilled. Able to protect community, no one was hurt, everything went well, learned a lot. Next meeting December 2, 2010. Larry had asked Clean Water Branch if it had gone to a stream. Henry stated it went to a dry stream bed.

2.2 Kauai: Albert Kau

- 2.2.1 LEPC meeting July 22, 2010, four people attended.
- 2.2.2 One incident on July 21, 2010, 50-70 gallons of used motor oil spilled along side hiway. He believes business owner did report it to Department of Health. Rod Yama from District Health Office came out to site. Business owner hired Hawaii Petroleum for clean-up.
- 2.2.3 September 7-9, participated with CST, training on equipment. Calibrating, air monitoring, sample collecting and packaging, Hazcatting. September 13-17 participated in different scenario and exercises dealing with Hazmat aspect. September 16 opened Aid Station, Suppression HazMat at station between Kealia and north of Kapa'a. Next meeting October 28.

2.3 Maui: Scott Kekuewa not here.

2.4 Oahu: Carter Davis not here.

3. EPA Update: Chris Curatilo-ERRG/EPA for Mike Ardito

- 3.1 Handouts on table, EPA Outreach Workshop is available on disk, his e-mail is: christopher.curatilo@errg.com.
- 3.2 Keith Kawaoka presented a "**Certificate of Appreciation**" to Larry from **EPA Region 9** for chairing the HSERC from May 2003 to November 2010. Larry will thank the EPA at his next meeting with them. He commented that our state works well with the EPA. He has heard that other sections of the country do not seem to have as good a relationship with their EPA Regions as we do. One of the main value of the commission is seeing each other, also in training, work and talk together before a major event may occur, helps a lot. Thanked Keith.

4. HMEP Update: Clarice Chung
 - 4.1 HMEP Grant closed September 30. Returning Planning Grant balance of \$23,838, Training Grant return is \$22. There was \$120,000 worth of training. Mid- year NASTTPO, October 24-26, in Las Vegas, planning money authorized for two. Hawaii and Maui County LEPCs are on rotation to attend. Henry will try to e-mail Scott. Waiting for award of the next grant. Hope to get that by September 30, able to use funds by October 1. If any LEPCs are planning projects for 2011 Grant Year, get specifications, estimated costs, Clarice needs them by December, next HSERC meeting or e-mail her. If LEPCs have no planning projects in mind. She could move money over to training or neighbor island reimbursements.

5. Harbor Fire Fighting Status: Sharon mentioned that Carter Davis attended the ORRT meeting. Chris Curatilo briefed the HSERC on the July 22, 2010 ORRT meeting. Carter did a presentation on "Lack of Marine Fire Fighting Training". Great presentation, it is on the EPA meeting minutes for ORRT. Mentioned that the EPA's "Out Reach Workshop" also available.

6. HEPCRA Administrative Rules Update: Rosiland Selback – Tetra Tech
 - 6.1 Public Hearing was in March, explained about testimony. Gave a briefing on what is happening with 128-E rules. Only comment came from Alexander and Baldwin. Passed out handout, explained about summary, **Response to Comment**. Larry will move it along today.

7. Other Business – Larry comments
Tight budget times, lost two OSCs, one retired, one rifted. Emergency standby OSC is only two weeks a month. Vector Control Branch was eliminated, taking risk, no resources. Challenge is to make a case to built back up. In the case of Drinking Water, we now have to rely more on the counties. State and Counties both did water sampling before. Reduced resources have increased the **public health risk**. Have to try harder to handle situations. Thanked everyone. Tin Shing wanted it noted in the **HSERC Meeting Minutes** of Larry's dedicated service all these years.

8. Schedule next HSERC Meeting:
December 3, 2010, 9:00 am., **Henry moved to adjourn, Albert seconded. Motion accepted.**
Meeting adjourned at 9:48 am

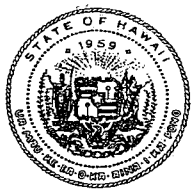
Respectively Submitted,

Sharon L. Leonida
Environmental Health Specialist III

MARCH

2011

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4	5
6	7 <small>Eastern Orthodox Lent begins</small>	8	9 <small>Ash Wednesday</small>	10	11 <i>furlough</i>	12
13 <small>Daylight Saving Time begins</small>	14	15	16	17 <small>St. Patrick's Day</small>	18 <i>furlough</i>	19
20 <small>Spring begins</small>	21 <small>Benito Juarez' Birthday (M)</small>	22	23	24	25 <i>Kuhio Day</i>	26
27	28	29	30	31		



LINDA LINGLE
GOVERNOR OF HAWAII

CHIYOME L. FUKINO, M.D.
DIRECTOR OF HEALTH

LIEUTENANT GOVERNOR'S OFFICE
STATE OF HAWAII
DEPARTMENT OF HEALTH

In reply, please refer to:
HEER OFFICE

*10 NOV 24 P 1:41
P.O. BOX 3378
HONOLULU, HAWAII 96801

HAWAII STATE EMERGENCY RESPONSE COMMISSION
MEETING #81

Friday, December 3, 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 #80
Announcements, Remarks
Curtis Martin, Department of Health, HEER Office
- 2) 9:15 LEPC Updates
Henry Silva, Hawaii LEPC Representative
Albert Kauai, Kauai LEPC Representative
Scott Kekuewa, Maui LEPC Representative
Carter Davis, Oahu LEPC Representative
- 3) 9:40 EPA Update
Mike Ardito, USEPA Region 9
- 10:00 BREAK
- 4) 10:10 HMEP
State Civil Defense
- 5) 10:20 Harbor Fire Fighting Status
HSERC, LEPC, HEER
- 6) 10:40 NASTTPO Mid-Year Update
LEPCs
- 7) 11:00 HEPCRA Administrative Rules
Update, Discussion and Decisions
HEER, Tetra Tech
- 8) 11:15 Other Business
- 9) 11:20 Schedule next HSERC meeting
HSERC, HEER, LEPCs

**U.S. Environmental Protection Agency
Pacific Southwest Region
Emergency Prevention and Preparedness Program Update
For the Hawai'i State Emergency Response Commission meeting
Friday, December 3, 2010 in Honolulu, HI**

Recent Additions to the EPA's National Website for Emergency Prevention and Preparedness

There are several recent highlighted additions to the EPA's national web site for EPCRA (Emergency Planning and Community Right-to-Know Act) and related programs at www.epa.gov/emergencies . The new additions and updates of interest include:

- EPA's Gulf of Mexico oil spill response link
- EPA's Response to Enbridge oil spill in Michigan
- EPA's interim policy on involvement of facility employees and employee representatives in on-site compliance evaluations at Risk Management Plan (RMP) program facilities.

NASTTPO Meetings 2010 - 11

The most recent "mid-year" meeting of the National Association of SARA Title III Program Officials (NASTTPO) was held in conjunction with the EPA national meeting for the Emergency Prevention and Preparedness programs on Tuesday, October 26 through Thursday, October 28 at the Las Vegas Marriott. Please check the NASTTPO Web site under the "conferences" link for the powerpoint presentations at <http://www.nasttpo.com/home>.

The next annual meeting of NASTTPO will be held Tuesday, April 26 through Thursday, April 28, 2011 at the Mission Palms Hotel and Conference Center in Tempe, AZ. Again, all State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) members are invited to attend.

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 .

**U.S. Environmental Protection Agency
Pacific Southwest Region
Emergency Prevention and Preparedness Program Update
For the Hawai'i State Emergency Response Commission meeting
Friday, December 3, 2010 in Honolulu, HI**

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**U.S. Environmental Protection Agency
Pacific Southwest Region
Emergency Prevention and Preparedness Program Update
For the Honolulu Local Emergency Planning Committee Meeting
Tuesday, December 21, 2010**

EPA's National Website for Emergency Prevention and Preparedness

There are several recent highlighted additions to the EPA's national web site for EPCRA (Emergency Planning and Community Right-to-Know Act) and related programs at www.epa.gov/emergencies . The new additions and updates of interest include:

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- EPA's interim policy on involvement of facility employees and employee representatives in on-site compliance evaluations at Risk Management Plan (RMP) program facilities.

NASTTPO Meetings 2010-11

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The next annual meeting of NASTTPO will be held Tuesday, April 26 through Thursday, April 28, 2011 at the Mission Palms Hotel and Conference Center in Tempe, AZ. Again, all State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) members are invited to attend. Next year's mid-year NASTTPO conference is tentatively scheduled for October 12 – 14 on the East Coast. It will be combined with EPA's national meeting and the commemoration of EPCRA's 25th anniversary.

The 50th State Gives EPA's GreenChill Program Its 50th Partner

Down to Earth ALL VEGETARIAN Organic & Natural, Hawaii's only all-vegetarian food store chain became the EPA's newest supermarket partner in the GreenChill program this fall to reduce refrigerant emissions, protect the ozone layer and fight climate change. Down to Earth is one of the few all-vegetarian food store chains in the nation. Founded in 1977 in Wailuku, Maui, the company is dedicated to improving the health of island communities. The company is the largest, locally operated natural food store chain Hawaii and has five stores. By joining GreenChill, Down to Earth pledges to go beyond regulatory requirements to protect the ozone layer and combat climate change. It will ensure that all of its new and remodeled stores use environmental friendly refrigerants, reduce the amount of refrigerant used and eliminate refrigerant leaks, and adopt green refrigeration technologies, strategies, and practices.

Next Year: Revisions to NRT-1

The National Response Team (NRT) and the EPA are currently working on revisions to the Hazardous Materials Planning Guide, NRT-1, that is expected to be updated in 2011. It was originally issued in March 1987.

(over)

EPA Issues Hawai'i Toxics Inventory Data for 2009

Toxics managed, treated or released into the environment from facilities operating in Hawai'i decreased 9 percent in 2009 when compared with 2008, according to the latest data made available from the U.S. EPA last week. The 299,000 pound decline reflects the reported decreases in air, water, and land disposals, releases and off-site transfers. In Hawai'i, the reported releases into the air decreased by 2 percent (approximately 49,000 pounds). The releases into water decreased in the state by 59 percent (approximately 327,000 pounds). However, Hawai'i reported an increase of releases via underground injection of 29 percent (about 1,000 pounds). The top five released chemicals in Hawai'i were sulphuric acid, hydrochloric acid, nitrate compounds, barium compounds, lead and lead compounds. In Hawai'i, a composite of about 110,000 pounds of persistent, bioaccumulative and toxic (PBT) chemicals were reported, a 19 percent or 18,000-pound increase. Lead and lead compounds top the PBT list for 2009.

The data comes from the EPA's Toxics Release Inventory, commonly referred to as TRI. It is also known as Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). It is one of the EPA's largest publicly available databases that provides communities valuable information on more than 650 toxic chemicals that are managed or released by various industries. The chemical information in the inventory is calculated by industrial facilities and reported to the EPA, as required by law.

Nationwide in 2009, there were 3.37 billion pounds of toxic chemicals released into the environment, a 12 percent decrease from 2008. The analysis also shows a 7 percent decrease in the number of facilities reporting to the TRI from the previous year, continuing a trend from the past few years. Some of this decline may be attributed to the economic downturn. TRI was recently recognized by the Aspen Institute as one of the 10 major ways that EPA has strengthened America. This was also the earliest release of annual TRI data to the public.

The EPA added 16 chemicals to the TRI list of reportable chemicals in November. These chemicals are reasonably anticipated to be human carcinogens, and represent the largest chemical expansion of the program in a decade. Data in the new TRI chemicals will be reported by facilities on July 1, 2012. For more information about the TRI reports, including Hawai'i for 2009, you may visit our web site at www.epa.gov/region09 and click on the news release(s) from December 16, 2010.

Certificate of Appreciation to Honolulu LEPC Chair Carter Davis

At today's Honolulu Local Emergency Planning Committee meeting, Mike Ardito presented a certificate of appreciation from U.S. EPA to Carter Davis, the Honolulu LEPC Chair, who is retiring from that post after serving in that role since 1994.

EPA 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.

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

October 11, 2010

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

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

- \$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
- \$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 secrecy 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. 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 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

NOV 05 2010

] (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, title 42 United States Code 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 chapter 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, title 42 United States Code 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 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 title 40 Code of Federal Regulations part 355, appendices A and B, 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 title 29 Code of Federal Regulations section 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.
- (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 title 29 of the Code of Federal Regulations section 1910.1200(g).

"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, title 42 United States Code section 2011 et seq., if this release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under title 42 United States Code 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, title 42 United States Code 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 title 40 Code of Federal Regulations part 372. [Eff NOV 05 2010] (Auth: HRS §128E-1) (Imp: HRS §128E-1)

§11-453-3 Incorporations by reference.

Reference to title 40 Code of Federal Regulations shall mean (unless otherwise specifically provided) the Superfund, Emergency Planning and Community Right-to-Know Act Regulations, July 2010. [Eff NOV 05 2010] (Auth: HRS §§128E-1, 128E-2) (Imp: HRS §§128E-1, 128E-2).

§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.

(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, title 40 Code of

Federal Regulations part 3, to the extent that it applies to commission or committee electronic business. [Eff **NOV 05 2010**] (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. 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 **NOV 05 2010**] (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. [Eff **NOV 05 2010**] (Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-7 Duties and responsibilities. The commission shall perform duties and responsibilities as described in section 128E-2(g), HRS. [Eff **NOV 05 2010**] (Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-8 Appointment of hearing officers. In addition to other specific powers provided in this chapter, the commission may appoint, without regard to chapter 76 HRS, hearing officers to conduct public participation activities, including public hearings

and public information meetings. [Eff NOV 05 2010]
(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 wilful 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 wilful misconduct. [Eff NOV 05 2010]
(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 NOV 05 2010] (Auth:
HRS §128E-4) (Imp: HRS §128E-4)

§11-453-11 Establishment of local emergency
planning committees. 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, title 42 United States Code section 11003. [Eff **NOV 05 2010**] (Auth: HRS §128E-5) (Imp: HRSS128E-5)

§11-453-12 Committee members. The commission shall appoint the committee members as described in section 128E-5(b) to (e), HRS. [Eff **NOV 05 2010**] (Auth: HRS §128E-2) (Imp: HRS §128E-2)

§11-453-13 Duties and responsibilities. Each committee shall perform duties and responsibilities as described in section 128E-5(f), HRS. [Eff **NOV 05 2010**] (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. [Eff **NOV 05 2010**] (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 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 wilful 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 wilful misconduct. [Eff NOV 05 2010] (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.

(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 per cent 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 NOV 05 2010] (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 **NOV 05 2010**] (Auth: HRS §128E-6) (Imp: HRS §128E-6)

§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 per cent 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 per cent.

(c) Extremely hazardous substances that are solids are subject to either of two threshold planning quantities as shown in title 40 Code of Federal Regulations 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 particle 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 title 40 Code of Federal Regulations part 355, appendices A or B.

(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 per cent 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 **NOV 05 2010**] (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 title 40 Code of Federal Regulations part 355, appendices A and B, as amended. [Eff **NOV 05 2010**] (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 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 title 40 Code of Federal Regulations section 302.8(b). Exemption from notification under this subchapter does not include exemption from:
- (A) Initial notifications as defined in title 40 Code of Federal Regulations section 302.8 (d) and (e);
 - (B) Notification of a "statistically significant increase", defined in title 40 Code of Federal Regulations section 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 title 40 Code of Federal Regulations section 302.8(g)(1); or
 - (D) Notification of a change in the normal range of the release as required under title 40 Code of Federal Regulations section 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 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.
 - (B) Nitrogen dioxide to the air that is the result of combustion and combustion-related activities. [Eff NOV 05 2010
] (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) 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 are those substances and quantities listed in title 40 Code of Federal Regulations part 355, appendices A and B, as amended.

(c) Hazardous substances are defined in section 128D-1, HRS, and designated in section 11-451-5. [Eff NOV 05 2010] (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) 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 as defined in title 40 Code of Federal Regulations 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 NOV 05 2010] (Auth: HRS §§128E-1, 128E-6, 128E-7) (Imp: HRS §§128E-1, 128E-6, 128E-7)

§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 released;
- (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 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 required 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 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 **NOV 05 2010**] (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 sections 11-451-4 through 11-451-7 and reporting requirements established under title 40 Code of Federal Regulations part 302, as necessary. [Eff **NOV 05 2010**] (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, title 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.

(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) through (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 title 40 Code of Federal Regulations part 355, appendices A or B, as amended. 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 (title 40 Code of Federal Regulations part 280 or requirements of the state underground storage tank program approved by the U.S. Environmental Protection Agency under title 40 Code of Federal Regulations 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 gas station that was in compliance at all times during the preceding calendar year with all applicable underground storage tank requirements (title 40 Code of Federal

- Regulations part 280 or requirements of the state underground storage tank program approved by the U.S. Environmental Protection Agency under title 40 Code of Federal Regulations 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.
- (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. [Eff **NOV 05 2010**
] (Auth: HRS §§128E-6, 128E-13) (Imp: HRS §§128E-6, 128E-13)

§11-453-26 Submittal of material safety data sheets. 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 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 NOV 05 2010]
(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 NOV 05 2010] (Auth: HRS §128E-6) (Imp: HRS §128E-6)

§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 or structures designated for storage including temporary storage for longer than 72 hours under active shipping papers 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

NOV 05 2010

] (Auth: HRS §128E-6)

(Imp: HRS §128E-6)

§11-453-30 Notification that a facility is no longer subject to hazardous chemical reporting requirements. 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

NOV 05 2010] (Auth: HRS §128E-6) (Imp: HRS §128E-6)

SUBCHAPTER 7

TOXIC CHEMICAL REPORTING

§11-453-31 Facilities subject to toxic chemical release reporting. (a) The owner or operator of a facility subject to toxic chemical release recordkeeping and reporting as described in title 40 Code of Federal Regulations 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 toxic release inventory-made easy tool) are not required to submit toxic chemical release data to the department. [Eff **NOV 05 2010**] (Auth: HRS §§128E-7, 128E-13) (Imp: HRS §§128E-7, 128E-13)

SUBCHAPTER 8

FUNDING AND FEES

§11-453-32 Annual inventory filing fees for hazardous chemical reporting. Facilities that are required to report according to section 11-453-27 shall remit \$100 with each submission of chemical inventory forms or tier II forms to the commission by March 1 of each year. All moneys collected by the department pursuant to this section shall be deposited in the state treasury and accrue to the credit of the environmental response revolving fund. [Eff **NOV 05 2010**] (Auth: HRS §128E-9) (Imp: HRS §128E-9)

11-453-33 Local emergency response planning committees account. (a) The department shall establish an account, to be called the local emergency response planning committees account, within the environmental response revolving fund pursuant to section 128D-2, HRS for the purpose of administration and oversight of this chapter.

(b) All moneys to meet the general operating needs and expenses of the Emergency Planning and Community Right-to-Know Act program of the department shall be allocated by the legislature through appropriations out of the state general fund and the environmental response revolving fund; provided that the appropriations from the environmental response revolving fund shall not exceed the amount of moneys collected from the filing fees assessed in section 128E-9, HRS. The department shall include in its budgetary request for each upcoming fiscal period the amounts necessary to effectuate the purposes of this chapter.

(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 moneys collected during the preceding fiscal year, the amount of moneys collected to date during the current fiscal year, and the amount of moneys 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 **NOV 05 2010**]
(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;
- (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

NOV 05 2010] (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 title 40 Code of Federal Regulations part 350 (Trade Secret Claims for Emergency Planning and Community Right-to-Know Act Information: and Trade Secret Disclosures to Health Professionals).

(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 title 40 Code of Federal Regulations section 350.15 and 350.16. [Eff NOV 05 2010] (Auth: HRS §§92F, 128E-2, 128E-6, 128E-13) (Imp: HRS §§92F, 128E-2, 128E-6, 128E-13)

SUBCHAPTER 10

ENFORCEMENT

§11-453-36 Violations. (a) Whenever, on the basis of information available, the commission finds

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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 remedies provided in this subchapter shall not preclude recourse to any other remedy so provided. [Eff **NOV 05 2010**] (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 moneys collected under this subchapter shall be deposited in the state treasury and accrue to the credit of the fines and cleanup account within the state general fund. [Eff **NOV 05 2010**] (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,

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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 chapter 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

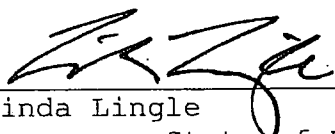
NOV 05 2010

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

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

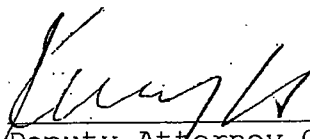

Chiyome Leinaala Fukino, M.D.
Director of Health

APPROVED: _____


Linda Lingle
Governor, State of Hawaii

Dated: 10/25/10

APPROVED AS TO FORM:


Deputy Attorney General

Filed

10 OCT 26 09:49

LEUTENANT GOVERNOR
OFFICE