

TITLE 11
HAWAII ADMINISTRATIVE RULES
DEPARTMENT OF HEALTH

CHAPTER 46
COMMUNITY NOISE CONTROL

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COMMUNITY NOISE CONTROL

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Historical Note: Chapter 46 is based substantially on Chapter 43 of Title 11, Hawaii Administrative Rules, Community Noise Control for Oahu, Department of Health, State of Hawaii. [Eff 11/6/81; SEP 23 1996]

§11-46-1 Purpose. It is the purpose of this chapter to define the maximum permissible sound levels, and to provide for the prevention, control, and abatement of noise pollution in the State from the

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following excessive noise sources: stationary noise sources; and equipment related to agricultural, construction, and industrial activities. It is also the purpose of this chapter to establish noise quality standards to protect public health and welfare, and to prevent the significant degradation of the environment and quality of life. [Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-31) (Imp: HRS §§342F-3, 342F-31)

§11-46-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Activity" means an act or combination of acts which create noise, and which is associated with any excessive noise source.

"Agricultural activities" means any or all activities necessary or incidental for the purpose of agricultural functions, such as land cultivation, crop production, and harvesting.

"Ambient or background noise" means the totality of sounds in a given place and time, independent of the sound contribution of the specific source being measured.

"Applicant" means a person or persons responsible for the excessive noise source.

"Authorized emergency vehicles" means police and fire vehicles; private and public ambulances; and state and county vehicles used for emergencies.

"Best available control technology" means any limitation based on the maximum degree of noise reduction which would be emitted from any excessive noise source which the director, on a case-by-case basis, considering environmental and economical impacts and other costs, determines is achievable for that source through application of production processes or available methods, systems, and techniques. If the director determines that technological or economic limitations would make the imposition of the provisions of this chapter infeasible, a design, equipment, work practice, or operational standard, or a combination thereof, may be prescribed instead to satisfy the requirement for the application of the best available control technology.

"Complaint" means any written charge filed with the department that a person is violating any provision of this chapter or order adopted pursuant to this

chapter.

"Construction activities" means any or all activities, including but not limited to those activities necessary or incidental to the erection, demolition, assembling, renovating, installing, or equipping of buildings, public or private highways, roadways, premises, and parks.

"Construction equipment" means any device designed and intended for use in construction, including but not limited to any air compressor, pile driver, bulldozer, pneumatic hammer, steam shovel, derrick, crane, tractor, grader, loader, power saw, pump, pneumatic drill, compactor, on-site vehicle, and power hand tool.

"Construction site" means any or all areas, necessary or incidental for the purpose of conducting construction activities.

"Council" means the legislative body of a county.

"County" means the city and county of Honolulu, county of Hawaii, county of Kauai, or county of Maui, State of Hawaii.

"dBA" means the A-weighted sound level or unit of measurement describing the total sound level of all noises as measured with a sound level meter using the "A" weighting network.

"Decibel" means the unit for measuring the volume of sound, equal to twenty times the logarithm to the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (0.0002 dynes per square centimeter).

"Department" means the department of health, State of Hawaii.

"Device" means any mechanism or instrument which is designed to or which actually produces sound when operated or handled.

"Director" means the director of the department of health, State of Hawaii, or the director's duly authorized agent.

"Dwelling" means a room or rooms connected together constituting an independent housekeeping unit for an individual or a family, containing facilities for bathing or cooking, or both.

"Emergency" means any condition which would require immediate attention or corrective action to avoid probable danger to property, or to the health and safety of people.

"Equipment" means any or all devices used in an

operation or activity.

"Excessive noise" means the presence of sound as measured by standard testing devices, and of a volume, or in quantities, and for durations, as established by this chapter.

"Excessive noise source" means any stationary noise source; and any equipment related to agricultural, construction, and industrial activity which emits sound in excess of the maximum permissible sound levels specified in section 11-46-4, as measured at any point at or beyond the property line.

"HRS" means Hawaii Revised Statutes.

"Holiday" means a day observed by federal or by state law for suspension of operations in whole or part.

"Impulsive noise" or "impact noise" means any sound with a rapid rise and decay of sound pressure level, lasting less than one second, caused by sudden contact between two or more surfaces, or caused by a sudden release of pressure, including but not limited to any hammering, pile driving, and explosion.

"Industrial activities" means any or all activities necessary or incidental to manufacturing, refining, or processing of materials and products.

"Maximum permissible sound levels" means the sound levels assigned to zoning districts, as established by the director. The maximum permissible sound levels are specified in section 11-46-4(a).

"Muffler" means a mechanical apparatus designed to allow the flow of gas, air, and steam, and to reduce the noise created by intake from or exhaust to the atmosphere by such flow.

"Noise" means any sound that may produce adverse physiological or psychological effects or interfere with individual or group activities, including but not limited to communication, work, rest, recreation, or sleep.

"Noise pollution" means noise emitted from any excessive noise source in excess of the maximum permissible sound levels.

"Off-hour roadwork" means any roadway construction between the hours of 6:00 p.m. and 7:00 a.m., which would require a variance from the director. For the purpose of this definition, roadway construction shall be limited to any activity, necessary or incidental to reconstruction or resurfacing of public or private

highways or roads.

"On-site vehicles" means fuel-, electric-, and air-powered vehicles, stationary and mobile, which are operated within the boundaries of a construction site or agricultural or industrial premises.

"Open space" means any zoning district or parcel essentially free of structures that serves the purpose of visual relief and buffering from building or structural mass.

"Operate" means perform or conduct any activity associated with an excessive noise source.

"Owner" means the owner of the freehold of the premises or lesser estate therein, or mortgagees thereof, a lessee or agent of any of the aforementioned persons, a lessee of a device or the lessee's agent, a tenant, operator, or any other person who has regular control of the premises, or of an equipment, or of a device.

"Party" means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

"Permit" means written authorization from the director to operate any excessive noise source.

"Person" means any individual, partnership, firm, association, public or private corporation, trust estate or any other legal entity, or the State or any of its political subdivisions.

"Premises" means any property, including its structure and other surrounding property, which is used as a dwelling, or as a place of business, or as a place to construct, manufacture, or conduct *any* activity.

"Property line boundary" means a line drawn through the points of contact of adjoining lands, apartments, condominiums, townhouses or duplexes, owned, rented, or leased by different persons; a demarcation or a line of separation of properties; and also, for any two or more buildings sharing common grounds, the line drawn midway between any two said buildings. For the purpose of this chapter, the property line includes all points on a plane formed by projecting the property line in a manner deemed appropriate by the director.

"Public space" means any zoning district or parcel used, owned, or managed by the federal government, the State of Hawaii, or the counties to fulfill a governmental function, activity, or service for public

benefit, including but not limited to libraries, satellite city halls, public schools, and post offices.

"School activity" means a public or private school function for students up through the twelfth grade which is approved by the school principal or an authorized representative.

"Sound" means an oscillation in pressure, particle displacement, particle velocity, or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

"Sound level" means the sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C, as specified in American National Standards Institute specifications for sound level meters.

"Sound level meter" means an instrument or combination of instruments, which meets or exceeds the requirement for a type I or type II sound level meter as specified in the American National Standard Institute, ANSI S1.4-1983, specifications for sound level meters.

"Sound pressure level" means twenty times the logarithm to the base ten of the ratio of the measured sound pressure to the reference sound pressure of 0.0002 dynes per square centimeter or twenty micropascals.

"Stationary noise source" means any mechanical source of noise fixed in or on a station, course, or mode within any premises, including but not limited to mechanical air conditioning units, exhaust systems, generators, compressors, pumps, or other similar equipment.

"Variance" means a special written authorization from the director to cause or emit excessive noise in a manner or amount in excess of applicable standards, or to do an act that deviates from the requirements of this chapter or any rules adopted under chapter 342F, HRS.

"Zoning districts" means the land use districts established by rules or ordinances adopted by council, legislature, county, or state government agencies.

[Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-31)
(Imp: HRS §§342F-1, 342F-3, 342F-31)

§11-46-3 Classification of zoning districts.

This section shall describe the zoning districts as specified in Table 1, maximum permissible sound levels in dBA, found in section 11-46-4, and as provided in section 11-46-4:

- (1) Class A zoning districts include all areas equivalent to lands zoned residential, conservation, preservation, public space, open space, or similar type.
 - (2) Class B zoning districts include all areas equivalent to lands zoned for multi-family dwellings, apartment, business, commercial, hotel, resort, or similar type.
 - (3) Class C zoning districts include all areas equivalent to lands zoned agriculture, country, industrial, or similar type.
- [Eff :SEP 23 1996] {Auth: HRS §§342F-3, 342F-31) {Imp: HRS §§342F-3, 342F-31)

§11-46-4 Maximum permissible sound levels in dBA.

{a) The maximum permissible sound levels specified in Table 1, as provided in this subsection and in section 11-46-3, shall apply to the following excessive noise sources: stationary noise sources; and equipment related to agricultural, construction, and industrial activities.

Table 1. Maximum permissible sounds levels in dBA.

Zoning Districts	Daytime		Nighttime	
	<u>7 a.m. to</u>	<u>10 p.m.</u>	<u>10 p.m. to</u>	<u>7 a.m. .</u>
Class A		55		45
Class B		60		50
Class C		70		70

(b) The maximum permissible sound levels in Table 1, as provided in subsection (a), shall apply to any excessive noise source emanating within the specified zoning district, and at any point at or beyond (past) the property line of the premises in a manner deemed

appropriate by the director.

(c) Noise levels shall not exceed the maximum permissible sound levels for more than ten per cent of the time within any twenty minute period, except by permit or variance issued under sections 11-46-7 and 11-46-8.

(d) For mixed zoning districts, the primary land use designation shall be used to determine the applicable zoning district class and the maximum permissible sound level.

(e) The maximum permissible sound level for impulsive noise shall be ten dBA above the maximum permissible sound levels specified in Table 1 of subsection (a). "Fast" meter response shall be used to measure these types of noise. (Eff **SEP 23 1996** 1
(Auth: HRS §§342F-3, 342F-31) (Imp: HRS §§342F-3, 342F-31)

§11-46-5 Exemptions. This chapter shall not apply to the following:

- (1) Any authorized emergency vehicle or vehicles responding to an emergency call or acting in an emergency;
- (2) The sounding of any emergency signaling device, including but not limited to civil defense warning systems, burglar and fire alarms, sirens, whistles, or similar signaling devices;
- (3) Activities related to the emergency maintenance and repair of state and county highways, parks, and public utilities including but not limited to water, sewer, electric, gas, and telephone systems, provided the noise is confined to only the equipment in use;
- (4) Operation of emergency generators, when installed and used as required and necessary for the protection of public health and safety, provided the best available control technology is implemented;
- (5) Backup alarm devices on any vehicle, where such device is required by federal or state occupational safety and health regulations;
- (6) Construction and remedial activities related to the emergency repair of damages caused by

- natural disasters, including but not limited to tsunamis and hurricanes; and
- (7) Any school activity which is approved by school authorities; provided that this exemption shall limit these activities to the hours of 7:00 a.m. to 10:00 p.m. [Eff SEP 23 1996 (Auth: HRS §§342F-3, 342F-31) (Imp: HRS §§342F-3, 342F-30, 342F-31)]

§11-46-6 Noise prohibited. (a) General prohibition. Without a permit or variance issued pursuant to section 11-46-7 or 11-46-8, no person within the State shall operate, from any premises or land owned, rented, leased, occupied, or controlled by that person, any excessive noise source.

(b) Specific prohibitions.

(1) Mufflers.

(A) No person shall operate nor shall its owner permit the operation of an on-site vehicle, construction equipment, or device, with a motor or exhaust system or both, without a muffler. This subparagraph shall not apply to pile hammers and pneumatic hand tools weighing less than fifteen pounds; and

(B1) No person shall operate nor shall its owner permit the operation of an on-site vehicle, construction equipment, tool, or device, on any premises or a construction site, with a motor or exhaust system or both, which has been altered, modified, or repaired; provided this subparagraph shall not apply if the operator or owner can show that the altered, modified, or repaired component is equally or more effective than the original component in reducing noise. [Eff SEP 23 1996] (Auth: HRS §§342F-3, 342F-30, 342F-31) (Imp: HRS §§342F-3, 342F-30, 342F-31)

§11-46-7 Permits. (a) Applicability. In accordance with section 342F-4, HRS, the director may grant, renew, modify, suspend, revoke, or deny permits

to operate any excessive noise source which emits or may emit noise levels in excess of the maximum permissible sound levels specified in Table 1, Maximum permissible sound levels in dBA, of section 11-46-4(a), which is in the public interest, and which may be subject to such reasonable conditions as the director may prescribe.

(b) The following factors in granting an application for permit or an application by a permit holder for the modification or renewal of a permit, may be considered by the director:

- (1) The best available control technology is provided to control noise levels from the excessive noise source;
- (2) The proposed noise emitting activity is in the public interest, as defined by subsection (C) ;
- (3) The services or activities for which the permit is sought are temporary and cannot be delayed, postponed, or rescheduled to a time period in which such services are permitted;
- (4) The applicant requires additional time to alter or modify the applicant's activity or operation to comply with this chapter;
- (5) The applicant has disclosed any possible impact from noises created by any proposed nighttime activity which may affect the immediate surrounding; and
- (6) The applicant plans to notify the people in the surrounding area of planned nighttime activity.

(c) In determining public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe.

- (1). Any determination of public interest shall promote the optimum balance between economic development and environmental quality.
- (d) Application for permit or renewal.
- (1) Every application for permit or renewal

shall be submitted on forms furnished by the director.

- (2) The applicant shall submit sufficient information to enable the director to make a decision on all applications. Subject to the request of the director, every application for permit or renewal may include the following information,
 - (A) Applicant identification;
 - (B) Type and purpose of activity;
 - (C) Location and time of activity;
 - (D) A list of vehicles, construction or agricultural equipment, tools, and any devices;
 - (E) A description of the stationary noise source, including information pertaining to the purpose of the noise producing source including supporting facts which demonstrate that termination of the noise source operation would constitute an unreasonable hardship on the applicant, on the community, or on other persons;
 - (F) Information pertaining to other available alternatives to replace the operation of the noise source;
 - (G) Estimated duration and schedule of activity;
 - (H) A detailed schedule of plans, procedures, and specifications for the attenuation of noise level emissions from the excessive noise source;
 - (I) Description of the immediate impact area; and
 - (J) Such other information as the director may request.
- (3) The director shall not act upon or consider any incomplete application for permit or renewal. An application shall be deemed complete only when all required and requested information, including the application form, plans, schedules, specifications, and other information have been timely submitted.
- (4) Every application shall be signed by the applicant and shall constitute an acknowledgment and agreement that the

- applicant will comply with all the terms and conditions of the permit, this chapter, and chapter 342F, HRS.
- (5) The failure of the director to act on a completed application within one hundred eighty days of the receipt of such application, shall be deemed a grant of such application; provided that the applicant acts consistently with the application process.
 - (6) The director may require the submission of additional information after the application has been submitted, and may ensure that, if an application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied all required information or otherwise corrected the deficiency.
- (e) Period of permit.
- (1) The director shall determine the effective period of the permit, which shall be for any term not exceeding five years.
 - (2) On written request, the director may extend the period of the permit upon showing that an extension is justified; provided in no case shall an extension be granted if the combined term of the originally issued permit and any extension or extensions exceed five years. Any extension or extensions shall be subject to annual fees as provided in subsection (i).
 - (3) The director, on application, may renew a permit from time to time, for any term not exceeding five years.
- (f) Application for modification of permit.
- (1) Every application for the modification of a permit shall be submitted in writing to the director; and
 - (2) The director shall not act upon or consider any incomplete request for a modification of a permit. A request for modification of a permit shall be deemed complete only when all required and requested information, including plans, schedules, specifications, and other information have been timely submitted.
- (g) No applicant for renewal of a permit shall be held in violation of this chapter during the pendency

of the applicant's application provided that the applicant acts consistently with the permit previously granted, the application of all plans, specifications, and other information submitted as a part thereof.

(h) Fees.

- (1) The director may establish reasonable fees for the issuance of permits and renewals to cover the cost of granting thereof and for the implementation and enforcement of the terms and conditions of permits;
- (2) Every applicant for permit or renewal shall pay the applicable annual fees as provided in subsection (i);
- (3) Fees shall not be refunded or applied to any subsequent application; and
- (4) Fees shall be made payable to the State of Hawaii.

(i) Fee schedule. The annual fee schedule for a permit or a renewal to a permit shall be as follows:

- (1) Permit fees for construction activities.
 - (A) \$25 per year for activities involving demolition, construction, extension, additions, or renovation of a single family dwelling.
 - (B) \$50 per year for all other activities, including but not limited to demolition of building structures, construction of buildings, residential subdivisions, shopping centers, bridges, reservoirs, utilities, roadway (including improvements), and site work for subdivisions and golf courses.
- (2) Permit fees for operation of stationary noise sources or equipment related to agricultural and industrial activities shall be \$50 per year.

(j) Specific permit restrictions for construction activities.

- (1) No permit shall allow any construction activities which emit noise in excess of the maximum permissible sound levels for the hours before 7:00 a.m. and after 6:00 p.m. of the same day, Monday through Friday;
- (2) No permit shall allow any construction activities which emit noise in excess of the maximum permissible sound levels for the

- hours before 9:00 a.m. and after 6:00 p.m. on Saturday; and
- (3) No permit shall allow any construction activities which emit noise in excess of the maximum permissible sound levels on Sundays and on holidays.
 - (k1) Transfer of permit.
 - (1) Each permit is nontransferable either from one location to another, from one activity to another, or from one person to another without the written approval of the director.
 - (1) Suspension, revocation, or denial. The director may suspend, revoke, or deny any permit if, after affording an opportunity for a hearing in accordance with chapter 91, HRS, it is determined that:
 - (1) There is a violation of any condition of the permit;
 - (2) There is a violation of this chapter;
 - (3) There are deviations from, or there is a failure to comply with, all information or facts contained within the permit;
 - (4) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;
 - (5) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the excessive noise emission; or
 - (6) Such action is in the public interest.
 - (m) Termination of permits. The director shall be notified, in writing, of the permanent termination of the activity for which the permit has been granted. If such notice is not received by the expiration date specified in the permit, the permit shall automatically terminate and the permittee shall be divested of all rights therein.
 - (n) Records. The director shall keep records of all permits and their disposition. [Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-4, 342F-14, 342F-31) (Imp: HRS §§342F-3, 342F-4, 342F-14, 342F-31)

§11-46-B variances. (a) Applicability. In accordance with section 342F-5, HRS, the director may grant, renew, modify, suspend, revoke, or deny variances to operate any excessive noise source which

emits or may emit noise levels in excess of the maximum permissible sound levels specified in Table 1, Maximum permissible sound levels in dBA, of section 11-46-4(a), and which use or operation does not conform to the requirements of section 11-46-7, or other applicable provisions of this chapter.

(b) No variance, modification, or renewal shall be granted by the director unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the emission occurring or proposed to occur by the granting of the variance is in the public interest, as defined in section 11-46-7(c1;
- (2) The emission occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the provisions of this chapter from which the variance is sought would produce serious hardship without equal or greater benefits to the public.

(c) Application for variance, modification, or renewal.

- (1) Every application shall be submitted on forms furnished by the director.
- (2) Every application shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the director may by rule prescribe.
- (3) Every application shall be reviewed, in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application; any additional information as may be submitted upon the request of the director; and the effect or probable effect upon the maximum permissible sound levels established pursuant to this chapter.
- (4) The applicant shall submit sufficient information to enable the director to make a decision on the application. Subject to the request of the director, every application for variance may include the following information:

- (A) Applicant identification;
 - (B) Type and purpose of *activity*, including a brief description of the applicant's activity which results in the proposed emission;
 - (C) Location and time of activity;
 - (D) A list of vehicles, construction or agricultural equipment, tools, and any devices;
 - (E) Estimated duration and schedule of activity;
 - (F) Plans and procedures for the attenuation of noise emission from noise sources to minimize excessive noise levels;
 - (G) Description of the immediate impact area;
 - (H) Any adverse environmental effects which cannot be avoided;
 - (I) Description of alternatives to the proposed activity;
 - (J) Discussion of the relationship between short-term use of the environment and the maintenance and enhancement of long-term productivity;
 - (K) Discussion of any irreversible and irretrievable commitments of resources which would be involved in the proposed activity;
 - (L) Disclosure of any possible impact from noise created by any proposed nighttime activity which may affect the immediate surrounding;
 - (M) Plans for notification of the people in the surrounding area of planned nighttime activities; and
 - (N) Such other information as the director may request.
- (5) The director shall not act upon or consider any incomplete application for variance, modification or renewal. An application shall be deemed complete only when all required and requested information, including the application form, plans, schedules, specifications, and other information have been timely submitted.
- (6) Every application shall be signed by the

applicant and shall constitute an acknowledgment and agreement that the applicant will comply with all of the terms and conditions of the variance, this chapter, and chapter 342F, HRS.

- (7) The director may require the submission of additional information after the application has been submitted, and may ensure that, if an application is incomplete or otherwise deficient, processing of the application shall not be completed until such time as the applicant has supplied all required information or otherwise corrected the deficiency.
- (8) Every application for renewal shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on a completed application for renewal within one hundred eighty days of the receipt of such application.
- (9) Every application for renewal shall meet all conditions specified in the immediately preceding variance; and shall provide for emission not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration.
- (d) Public participation requirements.
- (1) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements.
- (2) Public notices of every completed application for a variance, except an application for off-hour road work, shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed emission.
- (3) Procedures for the circulation of public notices shall include at least the following:
 - (A) Notices shall be circulated within the geographical areas of the proposed emission; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
 - (B) Notice shall be mailed to any person upon request; and

- (C) The director shall add the name of any person, upon request, to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area.
- (4) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written review with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.
- (5) The contents of the public notice of applications for variances shall include at least the following:
 - (A) Name, address, and phone number of agency issuing the public notice;
 - (B) Name and address of each applicant;
 - (C) Brief description of each applicant's activities or operations which result in the emission described in the variance application;
 - (D) A short description of the location of each emission indicating whether such emission is new or existing;
 - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (4), and any other means by which interested persons may influence or comment upon those determinations; and
 - (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.
- (6) The director may hold a public hearing, if, after reviewing the comments submitted under paragraph (4), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed emission or other appropriate area, at the

- discretion of the director.
- (e) Fees.
 - (1) The director may establish reasonable fees for the issuance of variance and renewals to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of variances.
 - (2) Every applicant for variance or renewal shall pay the applicable fee as set forth in subsection (f);
 - (3) Fees shall not be refunded nor applied to any subsequent application; and
 - (4) Fees shall be made payable to the State of Hawaii.
- (f) Fee schedule. The fee for a variance or renewal of a variance shall be \$100 per year and all costs associated with the public participation requirements as provided in subsection (d), including but not limited to costs for publication of public notices, circulation of public notices, and public hearing. Public notices shall be prepared by the department.
- (g) Granting of variances, modifications, or renewals.
 - (1) If a variance, modification, or renewal is granted on the grounds that there is no practicable means known or available for the adequate prevention, control, or abatement of the excessive noise involved, it shall be only until the necessary means for prevention, control, or abatement become practicable, and subject to the taking of any substitute or alternate measures that the director may prescribe.
 - (2) Every variance, modification, or renewal granted under this section shall include conditions requiring the grantee to perform noise sampling and report the results of such sampling to the director.
- (h) Period of variance, modification, or renewal.
 - (1) The director may issue a variance or renewal for a period not exceeding five years.
 - (2) The period of modification shall be the period of the variance originally issued, for the term not exceeding five years.

- (3) On written request, the director may extend the period of the variance upon showing that an extension is justified; provided in no case shall an extension be granted if the combined term of the originally issued variance and any extension or extensions exceeds five years. Any extension or extensions shall be subject to annual fees as provided in subsection {f}.

{il Variance conditions. Each variance may be subject to such reasonable conditions as the director may prescribe.

(j) Suspension, revocation, or denial. The director may suspend, revoke, or deny any variance if, after affording an opportunity for a hearing in accordance with chapter 91, HRS, it is determined that:

- (1) There is a violation of any condition of the variance;
- (2) There are deviations from, or failure to comply with, all information or facts contained within the variance;
- (3) The variance was obtained by misrepresentation or failure to disclose fully all relevant facts;
- (4) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the excessive noise emission; or
- (5) Such action is in the public interest.

{kl Termination of variances. The director shall be notified, in writing, of the permanent termination of the activity for which the variance has been granted. If such notice is not received by the expiration date specified in the variance, the variance shall automatically terminate and the applicant shall be divested of all rights therein.

(1) Records. The director shall keep records of all requests for variance and their disposition. [Eff **SeP 2 3 1996**] {Auth: HRS §§342F-3, 342F-5, 342F-14-, 342F-31) (Imp: HRS §§342F-3, 342F-5, 342F-14, 342F-31)

§11-46-9 Measurement of sound levels. (a) The director may adopt procedures which set forth criteria for the measurement of sound. such procedures may be

in substantial conformity with standards and recommended practices established by the American National Standards Institute or the Society of Automotive Engineers, and the latest revisions thereof.

(b) The director may revise such measurement procedures from time to time to reflect current engineering judgment and advances in noise measurement techniques.

(c) For the purpose of this chapter, sound level measurements shall be conducted using standard procedures, with sound level meters, using the "A" weighting network and "slow" meter response unless otherwise stated.

(d) Sound level meters and calibrators shall conform to specifications provided in the American National Standard, ANSI S1.4-1983, specification for sound level meters.

(e) Windscreens shall be used whenever appropriate.

(f) The various factors affecting the accuracy of a measurement shall be evaluated to the extent necessary for the implementation of this chapter. For example, if the accuracy with which a measurement can be made with specific instruments at a specific location is plus or minus two dBA, then any measured level greater than the specified maximum permissible sound level, plus two dBA, will indicate that excessive noise has been emitted.

(g) Measurements shall normally not be used for enforcement unless the noise level at a point of measurement is more than three decibels greater than the ambient or background noise level.

(h) The ambient noise level may be estimated from sound levels measured during nonoperation of the noise source or by sound levels measured at one or more points near the point of measurement where the noise source is inaudible. [Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-31) (Imp: HRS §§342F-3, 342F-31)

§11-46-10 certification. Persons conducting noise measurements for the enforcement of this chapter shall have been trained in the techniques of sound measurement and the operation of sound level meters and other sound measuring instruments and shall have been certified by the director. [Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-31) (Imp: HRS §§342F-3, 342F-31)

§11-46-11 Powers and duties. In order to implement and enforce this chapter and for the general purpose of prevention, control, and abatement of noise pollution in the State, the director shall have, in addition to any other vested authority, the power to:

- (1) Conduct research programs for the purpose of determining the causes, effects, and hazards of excessive noise and the means whereby noise may be monitored, controlled, or abated;
- (2) Conduct programs of public education regarding the causes, effects, and general methods of abatement and control of noise; the actions prohibited by this chapter and the procedures for reporting violations;
- (3) Cooperate, to the extent practicable, with all appropriate state, federal, and county agencies;
- (4) Coordinate noise programs with appropriate county agencies in providing technical assistance in areas such as development of regulatory control of activities creating noise disturbances, and in sound measurement;
- (5) Conduct state educational and training programs on noise prevention, control, and abatement, including the preparation and distribution of information relating to excessive noise and its effect on people;
- (6) Request any other department or agency responsible for any proposed or final standard, regulation, or similar action to consult on the advisability of revising the action, if there is reason to believe that the action is not consistent with any provision of this chapter;
- (7) Develop and recommend for promulgation, provisions regulating the use and operation of any product; and
- (8) Develop and promulgate standards, testing methods, and procedures. [Eff **SEP 23 1996**
(Auth: HRS §§342F-3, 342F-31, 3421?-33)
(Imp: HRS §§342F-3, 342F-31, 342F-33)]

§11-46-12 Inspection of premises. (a) The director upon receiving reports of, or identifying any

actual or suspected excessive noise source, is authorized, upon presenting appropriate credentials to the owner, operator, or agent in charge:

- (1) To enter at all reasonable hours, any premises-, to conduct an investigation, to ascertain compliance or noncompliance with this chapter, or any permit, variance or modification issued pursuant to this chapter, to make reasonable tests in connection therewith, and to recommend requirements for any noise attenuation measures;
- (2) To inspect at reasonable times and within reasonable limits and in a reasonable manner, any premises and all pertinent equipment or devices; and
- (3) To require that the owner, operator, or agent of any premises cease operation of all pertinent equipment, or devices for the purpose of conducting an investigation and inspection thereof.

(b) No confidential information secured pursuant to this section by any official or employee of the department, within the scope and course of the official's or employee's employment, in the prevention, control, or abatement of excessive noise, shall be disclosed by the official or employee, except as it relates directly to the excessive noise, and only in connection with the official's or employee's official duties and within the scope and course of **§b**

official's or employee's employment. [Eff **Sep 23 1996**] (Auth: HRS §§342F-3, 342F-6, 342F-31) (Imp: HRS §§342F-3, 342F-6, 342F-31)

§11-46-13 Other ordinances and rules. The council of any county may adopt and provide for the enforcement of ordinances regulating any matter relating to excessive noise. No such ordinance shall be held invalid on the ground that it covers any subject or matter embraced within any statute or rule of the State; provided that in any case of conflict between the statute or rule and ordinance, the law which affords the most protection to the public shall apply. [Eff **SEP 23 1990**] (Auth: HRS §§342F-3, 342F-20, 342F-31, 46-17) (Imp: §§342F-3, 342F-20, 342F-31)

§11-46-14 Enforcement. (a) Initial violation. If the director determines that any person has violated or is violating this chapter, or any condition of a permit, variance, or modification issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. This notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take any measures that may be necessary to correct the violation and give periodic progress reports;
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of; and
- (3) May impose penalties as provided in section 342F-11, HRS, and section 11-46-18 by sending a notice, in writing, either by certified mail or by personal services, to the alleged violator or violators describing the violation.

(b) Continuing violation. If the director determines that any person is continuing to violate this chapter, or any condition of a permit, variance, or modification issued pursuant to this chapter after having been served a notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which the measures shall be taken to bring that person in compliance with this chapter, or the conditions of a permit, variance, or modification issued pursuant to this chapter;
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of the schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director;
- (3) Shall issue to the alleged violator or

violators a cease order against the activities that violate this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until the director accepts the written schedule; and.

- (4) May impose penalties as provided in section 342F-11, HRS, or section 11-46-18 by sending a notice, in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

{c) Violation of abatement schedule or order. If the director determines that any person has violated the provisions of an accepted schedule or has violated an order issued under this section, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation.

(d) Violation order.

- (1) Any order issued under this chapter shall become final, unless no later than twenty days after the notice of order is served, the person or persons named therein request, in writing, a hearing before the director.
- (2) Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served, unless the person or persons named therein request, in writing, a hearing before the director.
- (3) Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

{e) Contested hearing.

- (1) Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
- (2) Any hearing conducted under this section shall be conducted as a contested case under

chapter 91, HRS.

- (3) If, after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed, or shall modify or affirm the order previously issued, or issue an appropriate order or orders for the prevention, abatement, or control of the violation involved, or for the taking of such other corrective action as may be appropriate.
- (4) If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty.
- (5) An order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation.
- (f) Civil action.
 - (1) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the administrative penalty which shall be a government realization.
 - (2) In any proceeding to collect the administrative penalty imposed, the director need only show that notice was given, .a hearing was held or the time granted for requesting a hearing expired without a request for a hearing, the administrative penalty was imposed, and the penalty remains unpaid.
- (g) Subpoena.
 - (1) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.
- (h) The director shall enforce the provisions of this chapter. [Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-9, 342F-31) (Imp: HRS §§342F-3, 342F-9, 342F-31)

§11-46-15 Records.

- (1) The director may require that the owner, operator, or agent of any premises establish and maintain all pertinent records.
- (2) The director shall have access to all pertinent records.
- (3) The director may require that the owner, operator, or agent of any premises develop and submit reports of all pertinent records;.
- (4) The director may require that the owner, operator, or agent of any premises produce copies of all pertinent records upon request by the director.
- (5) The director may require that the owner, operator, or agent of any premises conduct measurements of sound levels of any source in accordance with established methods and procedures, at such locations and times as the director may reasonably prescribe, and to furnish reports of the results of such measurements. . [Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-7, 342F-31} (Imp: HRS §§342F-3, 342F-7, 342F-31)

§11-46-16 Penalties. (a) Any person who violates any provision of this chapter, or any permit, variance, or modification issued pursuant to this chapter, shall be subject to fines of not more than \$10,000 for each separate offense. Each day of violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this subsection shall be considered a civil or administrative action, as the case may be.

(b) Any person who denies, obstructs, or hampers the entrance or inspection by any duly authorized employee of the department of any premises, or vehicle that the employee is authorized to enter and inspect, shall be fined not more than \$500. Any action taken to impose or collect the penalty provided for in tW-\$ section shall be considered a civil action. [Eff Sep **23 1996**] (Auth: HRS §§342F-3, 342F-9, 342F-31} (Imp: HRS §§342F-3, 342F-9, 342F-31)

§11-46-17 Citation. (a) Any person who commits

a violation of this chapter may be issued a summons or citation for such violation by any person authorized to enforce this chapter, hereinafter referred to as enforcement officer.

(b) The summons or citation shall warn the person to appear and answer to the charge against the person at a certain place and at a time within seven days after the issuance of the summons or citation.

(c) The summons or citation shall be printed on a form adopted or prescribed by the state district courts.

(d) Summons and citations shall be consecutively numbered and the carbon copy or copies of each shall bear the same number.

(e) The summons or citation shall be designed to provide for all necessary information.

(f) The original of a summons or citation shall be given to the purported violator and the other copy or copies distributed in the manner prescribed by the district courts; provided that the district courts may prescribe alternative methods of distribution of the original and any other copies.

(g) In the event any person fails to comply with a summons or citation issued to such person, the enforcement officer shall cause a complaint to be entered against the person and shall secure the issuance of a warrant for the person's arrest. Failure to comply with a summons or citation is a misdemeanor.

[Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-10, 342F-31) (Imp: HRS §§342F-3, 342F-10, 342F-31)

§11-46-18 Administrative penalties. (a) In addition to any other administrative or judicial remedy provided by this chapter, the director is authorized to impose by order the penalties specified in section 342F-9(b) and (c), HRS, and section 11-46-16.

(b) Factors to be considered in imposing an administrative penalty include:

- (1) The nature and history of the violation and of any prior violations;
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action;
- (4) Good faith efforts to comply; and

(5) Any other matters that justice may require.
 (c) It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary shall be on the violator. [Eff **Sep 23 1996** J (Auth: HRS §§342F-3, 342F-11, 342F-31) (Imp: HRS §§342F-3, 342F-11, 342F-31)]

§11-46-19 Injunctive and other relief. The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance, to impose and collect civil penalties, to collect administrative penalties, or obtain other relief. The court shall have the power to grant relief in accordance with the Hawaii rules of civil procedure. [Eff **SEP 23 1996** J (Auth: HRS §§342F-3, 342F-12, 342F-31) (Imp: HRS §§342F-3, 342F-12, 342F-31)]

§11-46-20 Public records. Reports submitted to the department on the emission of excessive noise shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. [Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-15, 342F-31) (Imp: HRS §§342F-3, 342F-15, 342F-31)

§11-46-21 Litigation. No part of this chapter shall be allowed as a defense against suit brought by any person for damage alleged to occur as a result of noise. [Eff **SEP 23 1996**] (Auth: HRS §§342F-3, 342F-31) (Imp: §§342F-3, 342F-31)

§11-46-22 Severability. If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the remainder of this

§11-46-21

chapter, and the application of the chapter to other persons or circumstances, shall not be affected thereby. [Eff **SEP 23 1996** (Auth: HRS §§342F-3, 342F-31) (Imp: HRS §§342F-3, 342F-31)]

DEPARTMENT OF HEALTH

The repeal of Chapter 11-43 and the adoption of Chapter 11-46, Hawaii Administrative Rules, on the Summaa Page dated **SEP 23 1996** were adopted on **SEP 23 1996**, following public hearings held on June 24, 1996 on the island of Kauai; June 25, 1996 on the island of Maui; June 26, 1996 in Hilo, Hawaii; June 27, 1996 in Kona, Hawaii; and July 1, 1996 on the island of Oahu, after public notices were given in the Honolulu Advertiser, Honolulu Star-Bulletin, Garden Isle, Maui News, Hawaii Tribune Herald, and West Hawaii Today on May 24, 1996.


The repeal of Chapter 11-43, and the adoption of Chapter 11-46, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

LAWRENCE MIIKE
Director
Department of Health

BENJAMIN J. CAYETANO
GOVERNOR
STATE OF HAWAII

Date: _____

APPROVED AS TO FORM:



Deputy Attorney General

SEP 12 1996

Filed: _____