HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 260

HAZARDOUS WASTE MANAGEMENT

GENERAL PROVISIONS

Subchapter A General Provisions

Subchapter B Definitions

Subchapter C Rulemaking Petitions

Subchapter D Appendices

SUBCHAPTER A

GENERAL PROVISIONS

§11-260-1 Purpose, scope, and applicability. (a) This chapter establishes definitions of terms, general standards, and overview information applicable to chapters 11-260 through 11-280.

(b) In this chapter:

(1) Section 11-260-2 sets forth the rules that the department will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to the department under chapters 11-260 through 11-280.

(2) Section 11-260-3 establishes rules of grammatical construction for chapters 11-260 through 11-280.

(3) Section 11-260-10 defines terms which are used in chapters 11-260 through 11-280.

(c) This chapter and chapters 11-261 through 11-280 establish rules governing hazardous waste management in Hawaii. Chapters 11-260 through 11-266, 11-268, 11-270, and 11-279 are patterned after the hazardous waste management regulations promulgated in 40 CFR Parts 260 through 266, 268, 270, and 279 respectively. Subchapter A of chapter 11-271 set forth the State rules corresponding to 40 CFR Part 124, subpart A. The specific chapters governing hazardous waste management are:

(1)	Chapter 11-260:	General Provisions
(2)	Chapter 11-261:	Identification and Listing of Hazardous Waste
(3)	Chapter 11-262:	Standards Applicable to Generators of Hazardous Waste
(4)	Chapter 11-263:	Standards Applicable to Transporters of Hazardous Waste
(5)	Chapter 11-264:	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
(6)	Chapter 11-265:	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities
(7)	Chapter 11-266:	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities
(8)	Chapter 11-268:	Land Disposal Restrictions
(9)	Chapter 11-270:	The Hazardous Waste Permit Program
(10)	Chapter 11-271:	Procedures for Decisionmaking
(11)	Chapter 11-279:	Standards for the Management of Used Oil

(12) Chapter 11-280: Public Information

(d) All references in tables and appendices to provisions of the code of federal regulations shall be construed to mean the State rule analogue of the referenced federal regulation (for example, 40 CFR 260.1 shall be construed to mean section 11-260-1 of the Hawaii Administrative Rules). [Eff 6/18/94; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: 40 C.F.R. §260.1)

§11-260-2 Availability of information; confidentiality of information. (a) Any information provided to the department under chapters 11-260 through 11-279 will be made available to the public to the extent and in the manner authorized by HRS sections 342J-14 and 342J-14.5, chapter 11-280, and any applicable provisions in HRS chapter 92F.

(b) Any person who submits information to the department in accordance with chapters 11-260 through 11-279 may assert a claim of business confidentiality covering part or all of that information. Information covered by such a claim will be disclosed by the department only to the extent, and by means of the procedures, set forth in chapter 11-280 except that information required by sections 11-262-53(a) and 11-262-83 that is submitted in a notification of intent to export a hazardous waste will be provided to the United States Department of State and the appropriate authorities in the transit and receiving or importing countries regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by the department, it may be made available to the public without further notice to the person submitting it. [Eff 6/18/94; am 3/13/99; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: 40 C.F.R. §260.2)

§11-260-3 Use of number and gender. As used in chapters 11-260 through 11-280:

(a) Words in the masculine gender also include the feminine and neuter genders; and

(b) Words in the singular include the plural; and

(c) Words in the plural include the singular.

[Eff 6/18/94; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: 40 C.F.R. §260.3)

SUBCHAPTER B

DEFINITIONS

§11-260-10 Definitions. When used in chapters 11-260 through 11-280, the following terms have the meanings given below:

"Above ground tank" means a device meeting the definition of ``tank'' in section 11-260-10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Act" or "RCRA" means the federal Solid Waste Disposal Act, as amended by the federal Resource Conservation and Recovery Act of 1976, as amended by the federal Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. section 6901 et seq.

"Active life of a facility" means the period from the initial receipt of hazardous waste at the facility until the director receives certification of final closure.

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also ``closed portion'' and ``inactive portion''.)

"Administrator" means the Administrator of the United States Environmental Protection Agency, or his designee.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

"Any state" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least sixty percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least seventy-five percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps).

"CWA" means the federal Clean Water Act, Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576; 33 U.S.C. section 1251 et seq.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also ``active portion'' and ``inactive portion''.)

"Component" means either the tank or ancillary equipment of a tank system.

"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subchapter DD of chapter 11-264 or 11-265.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

"Corrective action management unit" or "CAMU" means an area within a facility that is designated by the director under subchapter S of chapter 11-264, for the purpose of implementing corrective action requirements under section 11-264-101 or HRS section 342J-36. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"Department" or "DOH" means the Hawaii department of health.

"Designated facility" means a hazardous waste treatment, storage, or disposal facility which (1) has received a permit (or interim status) in accordance with the requirements of chapters 11-270 and 11-271, or 40 CFR Parts 270 and 124, (2) has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271, or (3) is regulated under paragraph 11-261-6(c)(2) or subchapter F of chapter 11-266, and (4) that has been designated on the manifest by the generator pursuant to section 11-262-20. If a waste is destined to a facility in an authorized state which has not yet obtained authorization from EPA to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in subsections (a) and (c) of sections 11-273-13 and 11-273-33. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Director" means the director of health or the director's authorized agent.

"Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous or solid waste into or on any land or water so that hazardous or solid waste or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

"Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"EPA" means the United States Environmental Protection Agency.

"EPA hazardous waste number" means the number assigned by EPA or the State to each hazardous waste listed in chapter 11-261, subchapter D, and to each characteristic identified in chapter 11-261, subchapter C.

"EPA identification number" means the number assigned by EPA or the State to each generator, transporter, and treatment, storage, or disposal facility.

"EPA region" means the states and territories found in any one of the following ten regions:

Region I -- Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Region II -- New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Region III -- Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV -- Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V -- Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

Region VI -- New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII -- Nebraska, Kansas, Missouri, and Iowa.

Region VIII -- Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.
Region IX -- California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.
Region X -- Washington, Oregon, Idaho, and Alaska.

"Elementary neutralization unit" means a device which:

(1) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in section 11-261-22, or they are listed in Subchapter D of chapter 11-261 only for this reason; and
(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in section 11-260-10.

"Existing hazardous waste management (HWM) facility" or "existing facility" means a facility which was in operation or for which construction commenced:

(1) On or before November 19, 1980; or
(2) Was in existence on the effective date of statutory or regulatory changes under RCRA that were made prior to the effective date of the first rules adopted under HRS chapter 342J, and that rendered the facility subject to the requirement to have an RCRA permit; or
(3) Is in existence on the effective date of statutory or regulatory changes under HRS chapter 342J that are made after the effective date of the first rules adopted under HRS chapter 342J and that render the facility subject to the requirement to have a permit under HRS section 342J-30(a).

A facility has commenced construction if:

(1) The owner or operator has obtained the federal, State and county approvals or permits necessary to begin physical construction; and either
(2) (i) A continuous on-site, physical construction program has begun; or
(ii) The owner or operator has entered into contractual obligations -- which cannot be cancelled or modified without substantial loss -- for physical construction of the facility to be completed within a reasonable time.

"Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, State, and county approvals or

permits necessary to begin physical construction of the site or installation of the tank system and if either:

(1) a continuous on-site physical construction or installation program has begun, or

(2) the owner or operator has entered into contractual obligations -- which cannot be canceled or modified without substantial loss -- for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Explosives or munitions emergency" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste management facilities.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include U.S. Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Facility" means:

(1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A

facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

(2) For the purpose of implementing corrective action under section 11-264-101, all contiguous property under the control of the owner or operator seeking a permit under HRS chapter 342J. This definition also applies to facilities implementing corrective action under HRS section 342J-36.

"Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the Government Printing Office.

"Federal, State and county approvals or permits necessary to begin physical construction" means permits and approvals required under federal, State or county hazardous waste control statutes, regulations, rules, or ordinances.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under chapters 11-264 and 11-265 are no longer conducted at the facility unless subject to the provisions in section 11-262-34.

"Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in chapter 11-261 or whose act first causes a hazardous waste to become subject to regulation under HRS chapter 342J.

"Ground water" means water below the land surface in a zone of saturation.

"HRS" means the Hawaii Revised Statutes.

"Hazardous waste" means a hazardous waste as defined in section 11-261-3.

"Hazardous waste constituent" means a constituent that caused the director to list the hazardous waste in chapter 11-261, subchapter D, or a constituent listed in Table 1 of section 11-261-24.

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a

land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

"Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also ``active portion'' and ``closed portion''.)

"Incinerator" means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible waste" means a hazardous waste which is unsuitable for:

(1) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(2) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(See chapter 11-265, Appendix V, for examples.)

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(1) Cement kilns
(2) Lime kilns
(3) Aggregate kilns
(4) Phosphate kilns
(5) Coke ovens
(6) Blast furnaces
(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
(8) Titanium dioxide chloride process oxidation reactors
(9) Methane reforming furnaces

(10) Pulping liquor recovery furnaces
(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least three percent, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of twenty percent as-generated.
(13) Such other devices as the director may, after notice and comment, add to this list on the basis of one or more of the following factors:
(i) The design and use of the device primarily to accomplish recovery of material products;
(ii) The use of the device to burn or reduce raw materials to make a material product;
(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
(v) The use of the device in common industrial practice to produce a material product; and
(vi) Other factors, as appropriate.

"Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inground tank" means a device meeting the definition of ``tank'' in section 11-260-10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"Injection well" means a well into which fluids are injected. (See also ``underground injection''.)

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"Installation inspector" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Land disposal," when the term is used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

"Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

"Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

"Management" or "hazardous waste management" means the systematic control over the generation, collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

"Manifest" means the shipping document EPA form 8700-22 and, if necessary, EPA form 8700-22A, originated and signed by the generator in accordance with the instructions included in the Appendix to chapter 11-262.

"Manifest document number" means the U.S. EPA twelve digit identification number assigned to the generator plus a unique five digit document number assigned to the Manifest by the generator for recording and reporting purposes.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Federal Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.), have been completed.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, or unit eligible for a research, development, and demonstration permit under section 11-270-65.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

"New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after October 21, 1976. (See also ``existing hazardous waste management facility''.)

"New tank system" or "new tank component" means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has

commenced after July 14, 1986; except, however, for purposes of paragraphs 11-264-193(g)(2) and 11-265-193(g)(2), a new tank system is one for which construction commences after July 14, 1986. (See also ``existing tank system.'')

"On ground tank" means a device meeting the definition of ``tank'' in section 11-260-10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

"Open burning" means the combustion of any material without the following characteristics:

(1) Control of combustion air to maintain adequate temperature for efficient combustion,

(2) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(3) Control of emission of the gaseous combustion products. (See also ``incineration'' and ``thermal treatment''.)

"Operator" means the person responsible for the overall operation of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of chapters 11-264 and 11-265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

"Person" means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity.

"Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with any applicable provisions of chapters 11-260 through 11-279.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(1) Is a new animal drug under section 201(w) of the Federal Food, Drug and Cosmetic Act, or

(2) Is an animal drug that has been determined by regulation of the U.S. Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under section 201(x) of the Federal Food, Drug and Cosmetic Act that bears or contains any substances described by paragraph (1) or (2) of this definition.

"Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a ``State'' or ``municipality'' (as defined by section 502(4) of the federal CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

"Qualified ground-water scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

"Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

"Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or

which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under section 11-264-101 or HRS section 342J-36. For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing HRS section 342J-36 for releases beyond the facility boundary.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of two-thousand five hundred Btu/lb of sludge treated on a wet weight basis.

"Small quantity generator" means a generator who generates less than one thousand kg of hazardous waste in a calendar month.

"Solid waste" means a solid waste as defined in section 11-261-2.

"Sorb" means to either adsorb or absorb, or both.

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

"State" means the State of Hawaii.

"Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage,

treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also ``incinerator'' and ``open burning''.)

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of section 11-273-13(c)(2) or 11-273-33(c)(2).

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

"Transportation" means the movement of hazardous waste by air, rail, highway, or water.

"Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, water, or pipeline.

"Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

(1) Whether the waste is amenable to the treatment process,
(2) what pretreatment (if any) is required,
(3) the optimal process conditions needed to achieve the desired treatment,
(4) the efficiency of a treatment process for a specific waste or wastes, or
(5) the characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of the subsections 11-261-4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A ``treatability study'' is not a means to commercially treat or dispose of hazardous waste.

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or render it nonhazardous, less hazardous, safer to transport, store, or dispose of, amenable for recovery, amenable for storage, reduced in volume, or so as to recover energy or material resources from the waste. This term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also ``injection well''.)

"Underground tank" means a device meeting the definition of ``tank'' in section 11-260-10 whose entire surface area is totally below the surface of and covered by the ground.

"Unfit-for use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

"United States" means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Universal waste" means any of the following hazardous wastes that are managed under the universal waste requirements of chapter 11-273:

(1) Batteries as described in section 11-273-2;
(2) Pesticides as described in section 11-273-3; and
(3) Thermostats as described in section 11-273-4.

"Universal waste handler":

(1) Means:
  (i) A generator (as defined in this section) of universal waste; or
  (ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:
  (i) A person who treats (except under the provisions of section 11-273-13(a) or 11-273-13(c), or section 11-273-33(a) or 11-273-33(c)), disposes of, or recycles universal waste; or
  (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal waste transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

"Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

"Wastewater treatment unit" means a device which:

(1) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the federal Clean Water Act; and
(2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in section 11-261-3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in section 11-261-3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in section 11-261-3; and

(3) Meets the definition of tank or tank system in section 11-260-10.

"Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

"Well injection" (See ``underground injection''.)

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water. [Eff 6/18/94; am 3/13/99; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: 40 C.F.R. §260.10)

§11-260-11 References. (a) When used in chapters 11-260 through 11-280, the following publications are incorporated by reference:

(1) ``ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester,'' ASTM Standard D-3278-78, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(2) ``ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester,'' ASTM Standard D-93-79 or D-93-80. D-93-80 is available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) ``ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography,'' ASTM Standard D-1946-82, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(4) ``ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method),'' ASTM Standard D 2382-83, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(5) ``ASTM Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis,'' ASTM Standard E 169-87, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(6) ``ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis,'' ASTM Standard E 168-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(7) ``ASTM Standard Practice for Packed Column Gas Chromatography,'' ASTM Standard E 260-85, available

from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(8) ``ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography,'' ASTM Standard D 2267-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(9) ``APTI Course 415: Control of Gaseous Emissions,'' EPA Publication EPA-450/2-81-005, December 1981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(10) ``Flammable and Combustible Liquids Code'' (1977 or 1981), available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210.

(11) ``Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I (July 1992), II (September 1994), IIA (August 1993), IIB (January 1995), and III (December 1996)]. The Third Edition of SW-846 and Updates I, II, IIA, IIB, and III (document number 955-001-00000-1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800. Copies of the Third Edition and its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(12) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised," October 1992, EPA Publication No. EPA-450/R-92-019, Environmental Protection Agency, Research Triangle Park, NC.

(13) "ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," ASTM Standard E926-88, Test Method C-Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(14) "API Publication 2517, Third Edition", February 1989, "Evaporative Loss from External Floating-Roof Tanks," available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005.

(15) "ASTM Standard Test Method for Vapor Pressure--Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," ASTM Standard D 2879-92, available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103.

(b) The references listed in subsection (a) are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. These materials are incorporated as they exist on the effective date of the latest amendment to this section. [Eff 6/18/94; am 3/13/99; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: 40 C.F.R. §260.11)

SUBCHAPTER C

RULEMAKING PETITIONS

§§11-260-20 to 11-260-39 (Reserved)

§11-260-40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis. (a) The director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in subparagraph 11-261-6(a)(2)(iv) should be regulated under subsections 11-261-6(b) and (c). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the director will consider the following factors:

(1) The types of materials accumulated or stored and the amounts accumulated or stored;
(2) The method of accumulation or storage;
(3) The length of time the materials have been accumulated or stored before being reclaimed;
(4) Whether any contaminants are being released into the environment, or are likely to be so released; and
(5) Other relevant factors.

The procedures for this decision are set forth in section 11-260-41. [Eff 6/18/94; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: 40 C.F.R. §260.40)

§11-260-41 Procedures for case-by-case regulation of hazardous waste recycling activities. The director will use the following procedures when determining whether to regulate hazardous waste recycling activities described in subparagraph 11-261-6(a)(2)(iv) under the provisions of subsections 11-261-6(b) and (c), rather than under the provisions of subchapter F of chapter 11-266.

(a) If a generator is accumulating the waste, the director will issue a notice setting forth the factual basis for the

decision and stating that the person must comply with the applicable requirements of subchapters A, C, D, and E of chapter 11-262. The notice will become final within thirty days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with chapter 11-262 is required. The order becomes effective thirty days after service of the decision unless the director specifies a later date.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of chapters 11-270 and 11-271. The owner or operator of the facility must apply for a permit within no less than sixty days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the department's determination. The question of whether the director's decision was proper will remain open for consideration during the public comment period discussed under section 11-271-11 and in any subsequent hearing. [Eff 6/18/94; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: 40 C.F.R. §260.41)

§11-260-42 Effect of exclusion of wastes under 40 CFR 260.22 EPA's exclusion of a waste produced at a particular facility pursuant to 40 CFR 260.22 shall not constitute an exclusion or delisting of the waste by the State unless the department adopts the exclusion or delisting by rule(s) promulgated pursuant to HRS chapter 91. [Eff 6/18/94; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: 40 C.F.R. §260.22)

SUBCHAPTER D

APPENDICES

§11-260-50 Appendix. Appendix I to 40 CFR Part 260, entitled "Overview of Hazardous Waste Management Regulations," revised as of July 15, 1993, is made a part of this chapter. [Eff 6/18/94; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: None)