DEPARTMENT OF HEALTH

Repeal of Chapter 11-264 and Adoption of
Chapter 11-264.1
Hawaii Administrative Rules

September 15, 2016

1. Chapter 264 of Title 11, Hawaii Administrative Rules, entitled “Hazardous Waste Management Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”, is repealed.

2. Chapter 264.1 of Title 11, Hawaii Administrative Rules, entitled “Hazardous Waste Management: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities”, is adopted to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 264.1

HAZARDOUS WASTE MANAGEMENT: STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

§11-264.1-1 Incorporation of 40 C.F.R. part 264
§11-264.1-2 Substitution of state terms for federal terms
§11-264.1-3 Amendments to the incorporation of 40 C.F.R. part 264, subpart A
§11-264.1-4 Amendments to the incorporation of 40 C.F.R. part 264, subpart B
§11-264.1-5 (Reserved)
§11-264.1-6 Amendments to the incorporation of 40 C.F.R. part 264, subpart D
§11-264.1-7 Amendments to the incorporation of 40 C.F.R. part 264, subpart E
§11-264.1-8 (Reserved)
§11-264.1-9 Amendments to the incorporation of 40 C.F.R. part 264, subpart G
§11-264.1-10 Amendments to the incorporation of 40 C.F.R. part 264, subpart H
§11-264.1-11 Amendments to the incorporation of 40 C.F.R. part 264, subpart I
§11-264.1-12 Amendments to the incorporation of 40 C.F.R. part 264, subpart J
§11-264.1-13 Amendments to the incorporation of 40 C.F.R. part 264, subpart K
§11-264.1-14 (Reserved)
§11-264.1-15 (Reserved)
§11-264.1-16 Amendments to the incorporation of 40 C.F.R. part 264, subpart N
§§11-264.1-17 to 11-264.1-18 (Reserved)

§11-264.1-19 Amendments to the incorporation of 40 C.F.R. part 264, subpart W
§11-264.1-20 (Reserved)
§11-264.1-21 Amendments to the incorporation of 40 C.F.R. part 264, subpart AA
§11-264.1-22 Amendments to the incorporation of 40 C.F.R. part 264, subpart BB
§11-264.1-23 Amendments to the incorporation of 40 C.F.R. part 264, subpart CC
§11-264.1-24 Amendments to the incorporation of 40 C.F.R. part 264, subpart DD

Historical note: This chapter is based substantially upon chapter 11-264. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R]

§11-264.1-1 Incorporation of 40 C.F.R. part 264. Title 40, part 264 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, 2016, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-264.1-2 to 11-264.1-24. [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-2 Substitution of state terms for federal terms. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 264, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) “Administrator”, “Assistant Administrator”, “Assistant Administrator for Solid Waste and Emergency Response”, “EPA Administrator”, “EPA Regional Administrator”, “Regional

Administrator", and "State Director" shall be replaced with "director of the Hawaii department of health".

(2) "Agency", "appropriate regional EPA office", "Environmental Protection Agency", "EPA", "EPA Headquarters", "EPA regional office", "EPA Regions", "U.S. Environmental Protection Agency", and "United States Environmental Protection Agency" shall be replaced with "state department of health" except in references to "EPA Acknowledgment of Consent", "EPA form(s)", "EPA guidance", "EPA hazardous waste numbers(s)", "EPA ID number", "EPA identification number(s)", "EPA manual(s)", "EPA publication(s)", and "EPA test methods".

(3) "Section 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-36, HRS".

(4) "RCRA Section 3008(h)" and "RCRA 3008(h)" shall be replaced with "42 U.S.C. section 6928(h) or section 342J-36, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections:

(1) 40 C.F.R. sections 264.12, 264.71, and 264.151. Wherever 40 C.F.R. section 264.151 requires that owners and operators notify several Regional Administrators of their financial obligations, the owner or operator shall notify both the department and all Regional Administrators of regions that are affected by the owner or operator's financial assurance mechanisms.

(2) The second occurrence of "EPA" in 40 C.F.R. section 264.1082(c)(4)(ii).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 shall mean the Hawaii Administrative Rules analog of the referenced federal regulation, as adopted and amended in chapters 11-260.1 to 11-279.1 as follows, except as listed in subsection (d):

Federal citation 40 C.F.R. part	State analog chapter 11-
124	271.1
260	260.1
261	261.1
262	262.1
263	263.1
264	264.1
265	265.1
266	266.1
268	268.1
270	270.1
273	273.1
279	279.1

(d) The following refer to the federal regulations in the Code of Federal Regulations:

(1) The references in 40 C.F.R. sections 264.1033(n)(1)(i), 264.1033(n)(2)(i), 264.1033(n)(3)(i), 264.1082(c)(2)(vii)(A), 264.1082(c)(2)(viii)(A), and 264.1087(c)(5)(i)(D).

(2) References to 40 C.F.R. sections 268.5, 268.6, and 268.42(b). [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-3 Amendments to the incorporation of 40 C.F.R. part 264, subpart A. The incorporation by reference of 40 C.F.R. section 264.1 is amended as follows:

(1) In 40 C.F.R. section 264.1(a), replace “national standards” with “State standards”.

(2) Replace 40 C.F.R. section 264.1(d) in its entirety to read: “Underground injection of hazardous waste is prohibited in the State of Hawaii.”

(3) 40 C.F.R. section 264.1(f) is excluded from incorporation.
(4) In 40 C.F.R. section 264.1(g)(1), replace “a State” with “the State”.
(5) In 40 C.F.R. section 264.1(g)(8)(iii), replace “parts 122 through 124 of this chapter” with “chapter 11-55”.
(6) In 40 C.F.R. section 264.1(g)(11)(iii), remove “and”.
(7) In 40 C.F.R. section 264.1(g)(11)(iv), replace the period at the end with “; and”.
(8) In 40 C.F.R. section 264.1(g)(11), add a subparagraph (v) to read “(v) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1.”
(9) 40 C.F.R. section 264.1(g)(12) is excluded from incorporation. [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-4 Amendments to the incorporation of 40 C.F.R. part 264, subpart B. (a) The incorporation by reference of 40 C.F.R. section 264.12 is amended as follows:
(1) Add a new subsection (d) to read: “(d) Any person who imports hazardous waste into the State from a foreign country must comply with section 11-262.1-12(a).”
(2) Add a new subsection (e) to read: “(e) Any person who imports hazardous waste into the State from any state must comply with section 11-262.1-12(b).”
(b) The incorporation by reference of 40 C.F.R. section 264.15 is amended as follows:
(1) In 40 C.F.R. section 264.15(b)(4), delete “, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director,

as described in paragraph (b)(5) of this section".

(2) 40 C.F.R. section 264.15(b)(5) is excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 264.18 is amended as follows: in 40 C.F.R. section 264.18(c), delete ", except for the Department of Energy Waste Isolation Pilot Project in New Mexico". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-5 (Reserved.)

§11-264.1-6 Amendments to the incorporation of 40 C.F.R. part 264, subpart D. The incorporation by reference of 40 C.F.R. section 264.56 is amended as follows: in 40 C.F.R. section 264.56(d)(2), replace "either the government official designated as the on-scene coordinator for that geographical area, or" with "the government official designated as the on-scene coordinator from the Hawaii department of health's Hazard Evaluation and Emergency Response Office via the State Hospital at (808) 247-2191 after business hours or directly at (808) 586-4249 during business hours and". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-7 Amendments to the incorporation of 40 C.F.R. part 264, subpart E. (a) The incorporation by reference of 40 C.F.R. section 264.73 is amended as follows:

(1) In 40 C.F.R. section 264.73(b)(10), replace ", a petition" with "or a petition" and

delete “or a certification under §268.8 of this chapter,”.

(2) In 40 C.F.R. section 264.73(b)(11) and 264.73(b)(12) delete “, and the certification and demonstration, if applicable,” and “or §268.8”.

(3) In 40 C.F.R. section 264.73(b)(13), delete “, and the certification and demonstration if applicable,”, one § symbol, and “and 268.8, whichever is applicable”.

(4) In 40 C.F.R. section 264.73(b)(14), delete “, and the certification and demonstration if applicable, required under §268.8, whichever is applicable”.

(5) In 40 C.F.R. section 264.73(b)(15) and 264.73(b)(16), delete “, and the certification and demonstration if applicable,” and “or §268.8”.

(b) The incorporation by reference of 40 C.F.R. section 264.75 is amended as follows: replace “8700-13B” with “8700-13A/B”. [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-8 (Reserved.)

§11-264.1-9 <u>Amendments to the incorporation of 40 C.F.R. part 264, subpart G.</u> (a) The incorporation by reference of 40 C.F.R. section 264.113 is amended as follows: 40 C.F.R. section 264.113(e)(7)(v) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.116 is amended as follows: replace “local zoning authority” with “county and local zoning authority” in both instances. [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-10 Amendments to the incorporation of 40 C.F.R. part 264, subpart H. (a) The incorporation by reference of 40 C.F.R. section 264.143 is amended as follows:

(1) In 40 C.F.R. section 264.143(a)(1), replace "a Federal or State agency" with "the State".

(2) In 40 C.F.R. section 264.143(h), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(b) The incorporation by reference of 40 C.F.R. section 264.145 is amended as follows:

(1) In 40 C.F.R. section 264.145(a)(1), replace "a Federal or State agency" with "the State".

(2) In C.F.R. section 264.145(h), replace "Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions" with "state, identical evidence of financial assurance must be submitted to and maintained with the state agency regulating hazardous waste in all such states or with the appropriate Regional Administrator if the facility is located in an unauthorized state".

(c) The incorporation by reference of 40 C.F.R. section 264.147 is amended as follows:

(1) In 40 C.F.R. section 264.147(a)(1)(i), delete ", or Regional Administrators if the

facilities are located in more than one Region".

(2) In 40 C.F.R. section 264.147(g)(2)(i)(B), replace "each State in which a facility covered by the guarantee is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(3) In 40 C.F.R. section 264.147(g)(2)(ii)(A), replace "each State in which a facility covered by the guarantee is located" with "the State of Hawaii".

(4) In 40 C.F.R. section 264.147(g)(2)(ii)(B), replace "each State in which a facility covered by the guarantee is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(5) In 40 C.F.R. section 264.147(i)(4)(ii), replace "each state in which a facility covered by the surety bond is located" with "the State of Hawaii" and replace "in that State" with "in their respective states".

(d) 40 C.F.R. sections 264.149 and 264.150 are excluded from the incorporation by reference of 40 C.F.R. part 264.

(e) The incorporation by reference of 40 C.F.R. section 264.151 is amended as follows:

(1) In 40 C.F.R. section 264.151(f), replace "3. In States where EPA is not administering the financial requirements of subpart H of 40 CFR part 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 CFR parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____." with "3. (Reserved)".

(2) In 40 C.F.R. section 264.151(g), replace "3. In States where EPA is not administering the

financial requirements of subpart H of 40 CFR parts 264 and 265, this firm is demonstrating financial assurance for the closure or post-closure care of the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H or 40 CFR parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: ____." with "3. (Reserved)". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-11 Amendments to the incorporation of 40 C.F.R. part 264, subpart I. 40 C.F.R. section 264.174 is replaced in its entirety to read: "At least weekly, the owner or operator must inspect areas where containers are stored. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions." [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-12 Amendments to the incorporation of 40 C.F.R. part 264, subpart J. (a) The incorporation by reference of 40 C.F.R. section 264.191 is amended as follows:

(1) In 40 C.F.R. section 264.191(a), replace "January 12, 1988" with "January 12, 1988 for HSWA tanks and June 18, 1995 for non-HSWA tanks".

(2) In 40 C.F.R. section 264.191(c), replace "Tank systems" with "HSWA tank systems" and add the following second sentence: "Non-HSWA tank systems that store or treat materials that become hazardous wastes subsequent to June 18, 1994 must conduct this assessment within twelve months after the date that the waste becomes a hazardous waste."

(b) The incorporation by reference of 40 C.F.R. section 264.195 is amended as follows: 40 C.F.R. section 264.195(e) is excluded from incorporation. [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-13 Amendments to the incorporation of 40 C.F.R. part 264, subpart K. The incorporation by reference of 40 C.F.R. section 264.221 is amended as follows: in 40 C.F.R. section 264.221(e)(2)(i)(C), replace "RCRA section 3005(c)" with "section 342J-5, HRS". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-264.1-14 to 11-264.1-15 (Reserved.)

§11-264.1-16 Amendments to the incorporation of 40 C.F.R. part 264, subpart N. The incorporation by reference of 40 C.F.R. section 264.301 is amended as follows:

(1) In 40 C.F.R. section 264.301(e)(2)(i)(C), replace “RCRA 3005(c)” with “section 342J-5, HRS”.

(2) 40 C.F.R. section 264.301(l) is excluded from incorporation. [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-264.1-17 to 11-264.1-18 (Reserved.)

§11-264.1-19 Amendments to the incorporation of 40 C.F.R. part 264, subpart W. (a) The incorporation by reference of 40 C.F.R. section 264.570 is amended as follows: in 40 C.F.R. 264.570(a), replace “December 6, 1990” with “December 6, 1990 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads”. Replace “December 24, 1992” with “December 24, 1992 for HSWA drip pads and June 18, 1994 for non-HSWA drip pads”.

(b) The incorporation by reference of 40 C.F.R. section 264.573 is amended as follows: in 40 C.F.R. section 264.573(i), replace “section 3010 of RCRA” with “section 342J-6.5, HRS”. [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-20 (Reserved.)

§11-264.1-21 Amendments to the incorporation of 40 C.F.R. part 264, subpart AA. (a) The incorporation by reference of 40 C.F.R. section 264.1030 is amended as follows:

(1) In 40 C.F.R. section 264.1030(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".

(2) 40 C.F.R. section 264.1030(d) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1033 is amended as follows:

(1) In 40 C.F.R. section 264.1033(a)(2)(iii), delete "EPA".

(2) In 40 C.F.R. section 264.1033(n)(1)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart X, as incorporated and amended in section 11-264.1-1" before "; or".

(3) In 40 C.F.R. section 264.1033(n)(2)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(4) In 40 C.F.R. section 264.1033(n)(3)(i), insert "or a state hazardous waste permit under chapter 11-270.1 which implements the requirements of C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-22 <u>Amendments to the incorporation of 40 C.F.R. part 264, subpart BB.</u> (a) The incorporation by reference of 40 C.F.R. section 264.1050 is amended as follows:

(1) In 40 C.F.R. section 264.1050(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is

issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued".

(2) 40 C.F.R section 264.1050(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1060 is amended as follows: in 40 C.F.R. section 264.1060(b)(3), delete "EPA". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-23 Amendments to the incorporation of 40 C.F.R. part 264, subpart CC. (a) The incorporation by reference of 40 C.F.R. section 264.1080 is amended as follows:

(1) In 40 C.F.R. section 264.1080(b)(5), insert "section 342J-36, HRS;" after "CERCLA authorities;".

(2) In 40 C.F.R. section 264.1080(c), replace "when the permit is reissued" with "when a state hazardous waste management permit is issued under chapter 11-270.1 or the EPA-issued RCRA permit is reissued" in both instances.

(3) 40 C.F.R. section 264.1080(e) to 264.1080(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 264.1082 is amended as follows:

(1) In 40 C.F.R. 264.1082(c)(2)(vii)(A), insert "or a state hazardous waste management permit under chapter 11-270.1 which implements the requirements of 40 C.F.R. part 264, subpart O, as incorporated and amended in section 11-264.1-1" before "; or".

(2) In 40 C.F.R. 264.1082(c)(2)(viii)(A), replace ", or" with "or a state hazardous waste management permit under chapter

11-270.1 which implements the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1; or".

(3) In C.F.R. section 264.1082(c)(4)(ii), insert "and approved by the State pursuant to chapter 11-268.1" at the end of the sentence.

(c) The incorporation by reference of 40 C.F.R. section 264.1087 is amended as follows: in 40 C.F.R. section 264.1087(c)(5)(i)(D), insert "; or a boiler or industrial furnace burning hazardous waste for which the owner or operator has been issued a state hazardous waste management permit under chapter 11-270.1 and has designed and operates the unit in accordance with the requirements of 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-24 <u>Amendments to the incorporation of 40 C.F.R. part 264, subpart DD.</u> (a) The incorporation by reference of 40 C.F.R. section 264.1100 is amended as follows: replace "RCRA section 3004(k)" with "40 C.F.R. 268.2(c), as incorporated and amended in section 11-268.1-1".

(b) The incorporation by reference of 40 C.F.R. section 264.1101 is amended as follows: replace 40 C.F.R. section 264.1101(c)(4) in its entirety to read: "Inspect and record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste." [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

3. The repeal of chapter 11-264 and the adoption of chapter 11-264.1, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format, pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on September 15, 2016, and filed with the Office of the Lieutenant Governor.

_____
VIRGINIA PRESSLER, M.D.
Director of Health

APPROVED AS TO FORM:

_____
Wade H. Hargrove III
Deputy Attorney General

_____
DAVID Y. IGE
Governor of Hawaii