

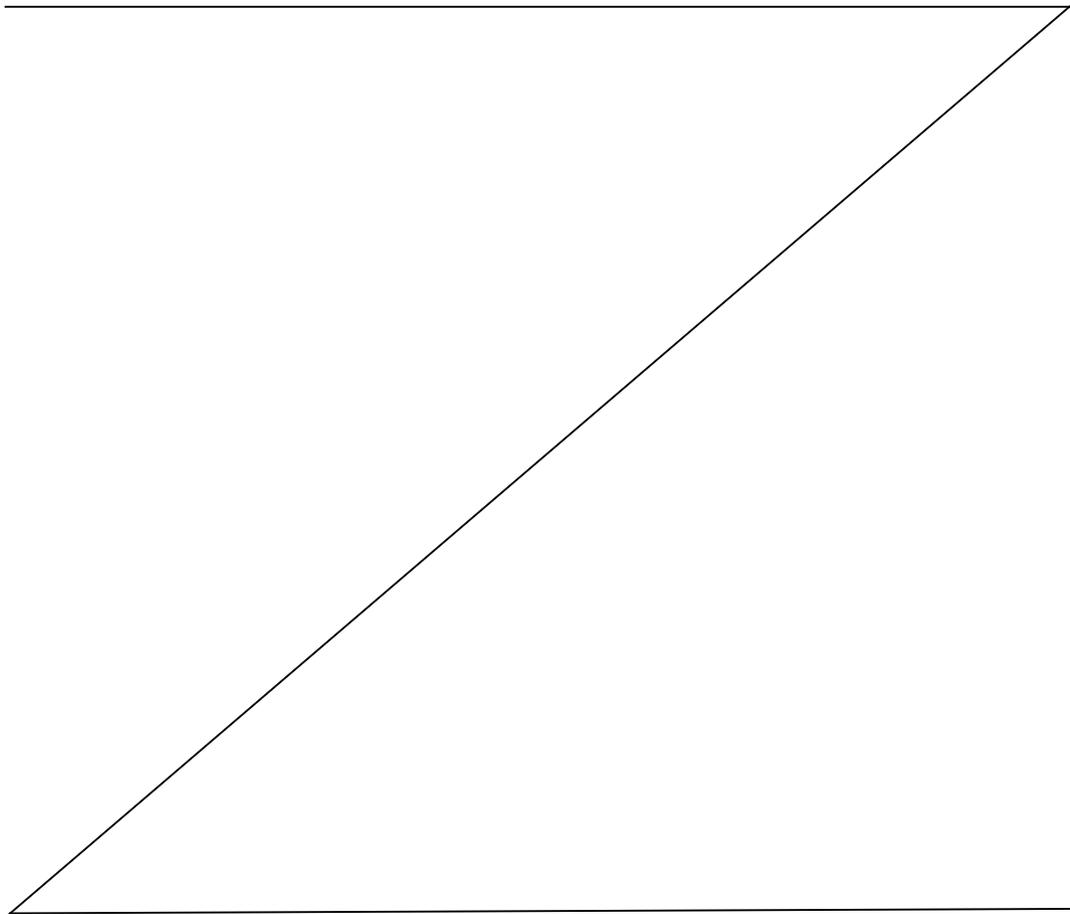
DEPARTMENT OF HEALTH

Repeal of Chapter 11-265 and Adoption of
Chapter 11-265.1
Hawaii Administrative Rules

September 15, 2016

1. Chapter 265 of Title 11, Hawaii Administrative Rules, entitled "Hazardous Waste Management Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities", is repealed.

2. Chapter 265.1 of Title 11, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Interim Status 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 265.1

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

§11-265.1-1	Incorporation of 40 C.F.R. part 265
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§11-265.1-13	Amendments to the incorporation of 40 C.F.R. part 265, subpart K
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§11-265.1-16	Amendments to the incorporation of 40 C.F.R. part 265, subpart N

§11-265.1-1

§§11-265.1-17 to 11-265.1-19 (Reserved)
§11-265.1-20 Amendments to the incorporation of 40
C.F.R. part 265, subpart R
§11-265.1-21 Amendments to the incorporation of 40
C.F.R. part 265, subpart W
§11-265.1-22 Amendments to the incorporation of 40
C.F.R. part 265, subpart AA
§11-265.1-23 Amendments to the incorporation of 40
C.F.R. part 265, subpart BB
§11-265.1-24 Amendments to the incorporation of 40
C.F.R. part 265, subpart CC
§11-265.1-25 Amendments to the incorporation of 40
C.F.R. part 265, subpart DD

Historical note: This chapter is based
substantially upon chapter 11-265. [Eff 6/18/94; am
3/13/99; comp 9/20/99; R]

§11-265.1-1 Incorporation of 40 C.F.R. part 265.
Title 40, part 265 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 11-265.1-2 to
11-265.1-25. [Eff] (Auth:
HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp:
HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-2 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 265, 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".

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

- (1) 40 C.F.R. sections 265.12 and 265.71.
- (2) The second occurrence of "EPA" in 40 C.F.R. section 265.1083(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	State analog
<u>40 C.F.R. part</u>	<u>chapter 11-</u>
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 265.1033(m)(1)(i), 265.1033(m)(2)(i), 265.1033(m)(3)(i), 265.1083(c)(2)(vii)(A), 265.1083(c)(2)(viii)(A), and 265.1088(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)

§11-265.1-3 Amendments to the incorporation of 40 C.F.R. part 265, subpart A. The incorporation by reference of 40 C.F.R. section 265.1 is amended as follows:

- (1) In 40 C.F.R. section 265.1(a), replace "national standards" with "state standards".
- (2) In 40 C.F.R. section 265.1(b), replace "section 3005 RCRA" with "section 342J-5, HRS,". Replace "facilities in existence on November 19, 1980" with "existing HWM facilities, as defined in 40 C.F.R. section 260.10, as incorporated and amended in section 11-260.1-1,". Replace "section 3010(a) of RCRA" with "42 U.S.C. section 6925(a) or section 342J-6.5, HRS". Add "or state rules" after "40 CFR 270.10 (e) and (g)".
- (3) 40 C.F.R. section 265.1(c)(4) is excluded from incorporation.
- (4) In 40 C.F.R. section 265.1(c)(5) replace "a State" with "the state".

- (5) In 40 C.F.R. section 265.1(c)(11)(iii), replace "parts 122 through 124 of this chapter" with "chapter 11-55".
- (6) In 40 C.F.R. section 265.1(c)(14)(iii), remove "and".
- (7) In 40 C.F.R. section 265.1(c)(14)(iv) replace the period at the end with "; and"
- (8) In 40 C.F.R. section 265.1(c)(14), 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 265.1(c)(15) 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)

§11-265.1-4 Amendments to the incorporation of 40 C.F.R. part 265, subpart B. (a) The incorporation by reference of 40 C.F.R. section 265.11 is amended as follows: replace "in accordance with the EPA notification procedures (45 FR 12746)" with "using EPA form 8700-12".

(b) The incorporation by reference of 40 C.F.R. section 265.12 is amended as follows:

- (1) Add a new subsection (c) to read: "(c) 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 (d) to read: "(d) Any person who imports hazardous waste into the State from any state must comply with section 11-262.1-12(b)."

(c) The incorporation by reference of 40 C.F.R. section 265.14 is amended as follows: in 40 C.F.R. section 265.14(a), insert "he can demonstrate to the director that" after "unless".

(d) The incorporation by reference of 40 C.F.R. section 265.15 is amended as follows:

- (1) In 40 C.F.R. section 265.15(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 265.15(b)(5) is excluded
from incorporation.

(e) The incorporation by reference of 40 C.F.R. section 265.18 is amended as follows: 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)

§11-265.1-5 (Reserved.)

§11-265.1-6 Amendments to the incorporation of 40 C.F.R. part 265, subpart D. The incorporation by reference of 40 C.F.R. section 265.56 is amended as follows: in 40 C.F.R. section 265.56(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)

§11-265.1-7 Amendments to the incorporation of 40 C.F.R. part 265, subpart E. (a) The incorporation by reference of 40 C.F.R. section 265.73 is amended as follows:

- (1) In 40 C.F.R. section 265.73(b)(8), replace "monitoring" with "or monitoring" and delete "or a certification under §268.8 of this chapter,".
- (2) In 40 C.F.R. section 265.73(b)(9), 265.73(b)(10), 265.73(b)(11), 265.73(b)(12), 265.73(b)(13), and 265.73(b)(14), delete ", and the certification and demonstration if applicable," and "or §268.8".

(b) The incorporation by reference of 40 C.F.R. section 265.75 is amended as follows: replace "EPA Form 8700-13B" with "EPA form 8700-13A/B". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-8 Amendments to the incorporation of 40 C.F.R. part 265, subpart F. The incorporation by reference of 40 C.F.R. section 265.90 is amended as follows: in section 40 C.F.R. section 265.90(d)(1), replace "develop" with "submit to the director". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-9 Amendments to the incorporation of 40 C.F.R. part 265, subpart G. (a) The incorporation by reference of 40 C.F.R. section 265.112 is amended as follows: in 40 C.F.R. section 265.112(d)(3)(ii), add "or section 342J-7, HRS" after "RCRA".

(b) The incorporation by reference of 40 C.F.R. section 265.113 is amended as follows: 40 C.F.R. section 265.113(e)(7)(v) is excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 265.116 is amended as follows: replace "local zoning authority" with "County and local zoning authority" in both instances.

(d) The incorporation by reference of 40 C.F.R. section 265.118 is amended as follows: in 40 C.F.R. section 265.118(e)(2), add "or section 342J-7, HRS" after "RCRA". [Eff _____] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-10 Amendments to the incorporation of 40 C.F.R. part 265, subpart H. (a) The incorporation by reference of 40 C.F.R. section 265.143 is amended as follows:

- (1) In 40 C.F.R. section 265.143(a)(1), replace "a Federal or State agency" with "the State".
- (2) In 40 C.F.R. section 265.143(c)(8), add "or section 342J-7, HRS" after "RCRA".
- (3) In 40 C.F.R. section 265.143(g), 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 265.145 is amended as follows:

- (1) In 40 C.F.R. section 265.145(a)(1), replace "a Federal or State agency" with "the State".
- (2) In 40 C.F.R. section 265.145(c)(9), add "or section 342J-7, HRS" after "RCRA".
- (3) In 40 C.F.R. section 265.145(g), 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 265.147 is amended as follows:

- (1) In 40 C.F.R. section 265.147(a)(1)(i), delete ", or Regional Administrators if the facilities are located in more than one Region".
- (2) In 40 C.F.R. section 265.147(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 265.147(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 265.147(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 265.147(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 265.149 and 265.150 are excluded from the incorporation by reference of 40 C.F.R. part 265. [Eff _____] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-11 Amendments to the incorporation of 40 C.F.R. part 265, subpart I. The incorporation by reference of 40 C.F.R. part 265, subpart I is amended as follows: Replace 40 C.F.R. section 265.174 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)

§11-265.1-12 Amendments to the incorporation of 40 C.F.R. part 265, subpart J. (a) The incorporation by reference of 40 C.F.R. section 265.191 is amended as follows:

- (1) In 40 C.F.R. section 265.191(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 265.191(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 265.195 is amended as follows: 40 C.F.R. section 265.195(d) is excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 265.201 is amended as follows: 40 C.F.R. section 265.201(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)

§11-265.1-13 Amendments to the incorporation of 40 C.F.R. part 265, subpart K. The incorporation by reference of 40 C.F.R. section 265.221 is amended as follows: in 40 C.F.R. section 265.221(d)(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)

§§11-265.1-14 to 11-265.1-15 (Reserved.)

§11-265.1-16 Amendments to the incorporation of 40 C.F.R. part 265, subpart N. The incorporation by reference of 40 C.F.R. section 265.301 is amended as follows: in 40 C.F.R. section 265.301(d)(2)(i)(C), replace "RCRA 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)

§§11-265.1-17 to 11-265.1-19 (Reserved.)

§11-265.1-20 Amendments to the incorporation of 40 C.F.R. part 265, subpart R. The incorporation by reference of 40 C.F.R. part 265, subpart R is amended as follows: replace 40 C.F.R. section 265.430 in its entirety to read: "Underground injection of hazardous waste is prohibited in the State of Hawaii." [Eff] (Auth: HRS §§342J-4, 342J-31,

342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31,
342J-34, 342J-35)

§11-265.1-21 Amendments to the incorporation of
40 C.F.R. part 265, subpart W. The incorporation by
reference of 40 C.F.R. section 265.440 is amended as
follows: in 40 C.F.R. section 265.440(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". [Eff] (Auth: HRS §§342J-4,
342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4,
342J-31, 342J-34, 342J-35)

§11-265.1-22 Amendments to the incorporation of
40 C.F.R. part 265, subpart AA. (a) The
incorporation by reference of 40 C.F.R. section
265.1030 is amended as follows: 40 C.F.R. section
265.1030(c) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R.
section 265.1033 is amended as follows:

- (1) In 40 C.F.R. section 265.1033(a)(2)(iii),
delete "EPA".
- (2) In 40 C.F.R. section 265.1033(m)(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 265.1033(m)(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 265.1033(m)(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)

§11-265.1-23 Amendments to the incorporation of 40 C.F.R. part 265, subpart BB. The incorporation by reference of 40 C.F.R. section 265.1050 is amended as follows: 40 C.F.R. section 265.1050(f) 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)

§11-265.1-24 Amendments to the incorporation of 40 C.F.R. part 265, subpart CC. (a) The incorporation by reference of 40 C.F.R. section 265.1080 is amended as follows:

- (1) In 40 C.F.R. section 265.1080(b)(5), insert "section 342J-36, HRS;" after "CERCLA authorities".
- (2) In 40 C.F.R. section 265.1080(c)(1) and 265.1080(c)(2), 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".
- (3) 40 C.F.R. section 265.1080(e) to 265.1080(g) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 265.1082 is amended as follows: in 40 C.F.R. section 265.1082(c) and 265.1082(d), replace "December 8, 1997" with "March 13, 1999".

(c) The incorporation by reference of 40 C.F.R. section 265.1083 is amended as follows:

- (1) In 40 C.F.R. section 265.1083(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. section 265.1083(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 265.1083(c)(4)(ii), insert "and approved by the State pursuant to chapter 11-268.1" at the end of the sentence.

(d) The incorporation by reference of 40 C.F.R. section 265.1088 is amended as follows: in 40 C.F.R. section 265.1088(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)

§11-265.1-25 Amendments to the incorporation of 40 C.F.R. part 265, subpart DD. The incorporation by reference of 40 C.F.R. section 265.1101 is amended as follows: replace 40 C.F.R. section 265.1101(c)(4) in its entirety to read: "Inspect and record in the facility's operating 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 11-265 and the adoption of chapter 11-265.1, 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