

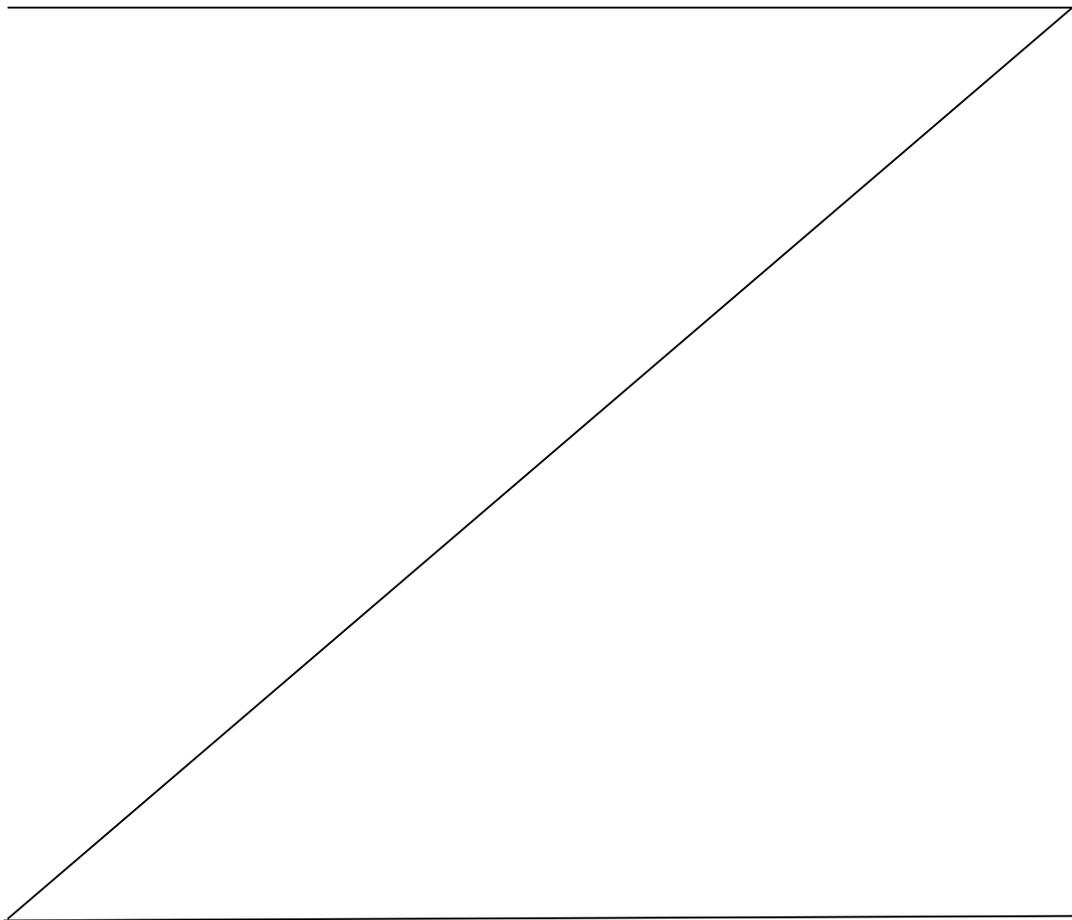
DEPARTMENT OF HEALTH

Repeal of Chapter 11-271 and Adoption of
Chapter 11-271.1
Hawaii Administrative Rules

September 15, 2016

1. Chapter 271 of Title 11, Hawaii Administrative Rules, entitled "Hazardous Waste Management Procedures For Decisionmaking", is repealed.

2. Chapter 271.1 of Title 11, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Permit Procedures", is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 271.1

HAZARDOUS WASTE MANAGEMENT:
PERMIT PROCEDURES

- §11-271.1-1 Incorporation of 40 C.F.R. part 124,
subparts A and B
- §11-271.1-2 Substitution of state terms for federal
terms
- §11-271.1-3 Amendments to the incorporation of 40
C.F.R. part 124, subpart A
- §11-271.1-4 Amendments to the incorporation of 40
C.F.R. part 124, subpart B

Historical note: This chapter is based
substantially upon chapter 11-271, subchapter A. [Eff
6/18/94; am 3/13/99; comp 9/20/99; R
]

§11-271.1-1 Incorporation of 40 C.F.R. part 124,
subparts A and B. Title 40, part 124, subparts A and
B of the Code of Federal Regulations (C.F.R.),
published by the Office of the Federal Register, as
amended as of July 1, 2015, is made a part of this
chapter subject to the substitutions and amendments
set forth in sections 11-271.1-2 to 11-271.1-4. [Eff
] (Auth: HRS §§342J-4, 342J-31,
342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31,
342J-34, 342J-35)

§11-271.1-2 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 124, as incorporated and amended in this chapter:

- (1) "Agency", "EPA", "Regional Office", and "issuing Regional Office" shall be replaced with "state department of health".
- (2) "Board", "Clerk of the Environmental Appeals Board", "Environmental Appeals Board", and "Regional Administrator" shall be replaced with "director of the Hawaii department of health".

(b) 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:

Federal citation <u>40 C.F.R. part</u>	State analog <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

[Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-271.1-3 Amendments to the incorporation of 40 C.F.R. part 124, subpart A. (a) The incorporation by reference of 40 C.F.R. section 124.1 is amended as follows:

- (1) Replace 40 C.F.R. section 124.1(a) in its entirety to read: "(a) This part contains state department of health procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA permits governed by chapter 11-270.1. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under 40 C.F.R. section 270.29, as incorporated and amended in section 11-270.1-1."
- (2) Replace 40 C.F.R. section 124.1(b) in its entirety to read: "(b) Subpart A describes the steps the state department of health will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment, and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decisions. Subpart B contains public participation requirements applicable to all RCRA hazardous waste management facilities."
- (3) 40 C.F.R. section 124.1(d) to 124.1(f) are excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 124.2 is amended as follows: replace 40 C.F.R. section 124.2 in its entirety to read: "Terms used in this chapter have the meanings given in 40 C.F.R. section 270.2, as incorporated and amended in section 11-270.1-1. Terms not defined have the meaning given by RCRA."

(c) The incorporation by reference of 40 C.F.R. section 124.3 is amended as follows:

- (1) Replace 40 C.F.R. section 124.3(a) in its entirety to read:
 - "(a)(1) Any person who requires a permit under 40 C.F.R. section 270.1, as incorporated and amended in section 11-270.1-1, shall complete, sign, and submit to the director an application. Applications are not required for RCRA permits by rule (40 C.F.R. section 270.60, as incorporated and amended in section 11-270.1-1).
 - (2) The director shall not begin the processing of a permit until the application has fully complied with the application requirements. See 40 C.F.R. sections 270.10 and 270.13, as incorporated and amended in section 11-270.1-1.
 - (3) Permit applications must comply with the signature and certification requirements of 40 C.F.R. section 270.11, as incorporated and amended in section 11-270.1-1."
- (2) In 40 C.F.R. section 124.3(c), delete ", a new UIC injection well, a major PSD stationary source or major PSD modification, or a NPDES new source or NPDES new discharger", ", existing injection well or existing NPDES sources or sludge-only facility", and ", an existing UIC injection well or an existing NPDES source or "sludge-only facility"".
- (3) In 40 C.F.R. section 124.3(d), replace ", SDWA sections 1423 and 1424, CAA section 167, and CWA sections 308, 309, 402(h), and 402(k)" with "and section 342J-7, HRS".
- (4) In 40 C.F.R. section 124.3(g), delete "major new UIC injection well, major NPDES new source, major NPDES new discharger, or a permit to be issued under provisions of §122.28(c)," and "(This paragraph does not apply to PSD permits.)".

(d) 40 C.F.R. section 124.4 is excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A.

(e) The incorporation by reference of 40 C.F.R. section 124.5 is amended as follows:

- (1) Replace 40 C.F.R. section 124.5(a) in its entirety to read: "(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in 40 C.F.R. sections 270.41 and 270.43, as incorporated and amended in section 11-270.1-1. All requests shall be in writing and shall contain facts or reasons supporting the request."
- (2) In 40 C.F.R. section 124.5(b), delete "The Environmental Appeals Board may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section." and "This informal appeal is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of EPA action in denying a request for modification, revocation and reissuance, or termination."
- (3) In 40 C.F.R. section 124.5(c), delete "(Applicable to State Programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))."
- (4) Replace 40 C.F.R. section 124.5(c)(1) in its entirety to read: "(1) If the director tentatively decides to modify or revoke and reissue a permit under 40 C.F.R. section 270.41 or 270.42(c), as incorporated and amended in section 11-270.1-1, he or she shall prepare a draft permit under 40 C.F.R. section 124.6, as incorporated and amended in this chapter, incorporating the proposed changes. The director may request additional

information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the director shall require the submission of a new application."

- (5) In 40 C.F.R. section 124.5(c)(3), delete "Minor modifications" as defined in §§122.63 (NPDES), 144.41 (UIC), and 233.16 (404), and" and "(RCRA)".
- (6) Replace 40 C.F.R. section 124.5(d) in its entirety to read: "(d) If the director tentatively decides to terminate a permit under 40 C.F.R. section 270.43, as incorporated and amended in section 11-270.1-1, where the permittee objects, the director shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under 40 C.F.R. section 124.6, as incorporated and amended in this chapter."
- (7) 40 C.F.R. section 124.5(f) and (g) are excluded from incorporation.
 - (f) The incorporation by reference of 40 C.F.R. section 124.6 is amended as follows:
 - (1) Replace 40 C.F.R. section 124.6(a) in its entirety to read: "(a) Once an application is complete, the director shall tentatively decide whether to prepare a draft permit or to deny the application."
 - (2) 40 C.F.R. section 124.6(c) is excluded from incorporation.
 - (3) Replace 40 C.F.R. section 124.6(d) in its entirety to read: "(d) If the director decides to prepare a draft permit, he or she shall prepare a draft permit that contains the following information:
 - (1) All the conditions under 40 C.F.R. section 270.30 and 270.32, as incorporated and amended in section 11-270.1-1;

- (2) All compliance schedules under 40 C.F.R. section 270.33, as incorporated and amended in section 11-270.1-1;
 - (3) All monitoring requirements under 40 C.F.R. section 270.31, as incorporated and amended in section 11-270.1-1; and
 - (4) Standards for treatment, storage, and/or disposal and other permit conditions under 40 C.F.R. section 270.30, as incorporated and amended in section 11-270.1-1."
- (4) In 40 C.F.R. section 124.6(e), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)". Replace "For RCRA, UIC or PSD permits, an appeal may be taken under §124.19 and, for NPDES permits, an appeal may be taken under §124.74. Draft permits prepared by a State shall be accompanied by a fact sheet if required under §124.8." with "A contested case hearing may be requested as provided in 40 C.F.R. section 124.15, as incorporated and amended in this chapter."
- (g) The incorporation by reference of 40 C.F.R. section 124.8 is amended as follows:
- (1) In 40 C.F.R. section 124.8, delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)".
 - (2) Replace 40 C.F.R. section 124.8(a) in its entirety to read: "(a) A fact sheet shall be prepared for every draft permit for a major HWM facility or activity and for every draft permit which the director finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The director shall send this fact sheet to

the applicant and, on request, to any other person."

- (3) 40 C.F.R. section 124.8(b)(3), (b)(8), and (b)(9) is excluded from incorporation.

(h) The incorporation by reference of 40 C.F.R. section 124.9 is amended as follows:

- (1) In the section heading for 40 C.F.R. section 124.9, delete "when EPA is the permitting authority".
- (2) 40 C.F.R. section 124.9(b)(6) is excluded from incorporation.

(i) The incorporation by reference of 40 C.F.R. section 124.10 is amended as follows:

- (1) In 40 C.F.R. section 124.10(a)(1)(ii) and (a)(1)(iii), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)".
- (2) 40 C.F.R. section 124.10(a)(1)(iv) and (a)(1)(v) is excluded from incorporation.
- (3) In 40 C.F.R. section 124.10(b), delete "(applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)".
- (4) Replace 40 C.F.R. section 124.10(b)(1) in its entirety to read: "(1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under 40 C.F.R. 124.10(a), as incorporated and amended in this chapter, shall allow at least 45 days for public comment."
- (5) In 40 C.F.R. section 124.10(c), delete "(applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.23 (404), and 271.14 (RCRA).)".
- (6) Replace 40 C.F.R. section 124.10(c)(1)(i) to read: "(i) The applicant;".
- (7) In 40 C.F.R. section 124.10(c)(1)(iii), delete "(For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian Tribes treated as States.)"

- (8) 40 C.F.R. section 124.10(c)(1)(iv) to (c)(1)(viii) is excluded from incorporation.
 - (9) 40 C.F.R. section 124.10(c)(1)(xi) is excluded from incorporation.
 - (10) 40 C.F.R. section 124.10(c)(2)(i) is excluded from incorporation.
 - (11) In 40 C.F.R. section 124.10(c)(2)(ii), replace the period at the end of the sentence with "; and".
 - (12) 40 C.F.R. section 124.10(c)(3) is excluded from incorporation.
 - (13) In 40 C.F.R. section 124.10(d), delete "(applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))—".
 - (14) In 40 C.F.R. section 124.10(d)(1)(ii), delete ", except in the case of NPDES and 404 draft general permits under §§122.28 and 233.37".
 - (15) In 40 C.F.R. section 124.10(d)(1)(iii), delete ", for NPDES or 404 general permits when there is no application".
 - (16) In 40 C.F.R. section 124.10(d)(1)(vi), replace "For EPA-issued permits, the" with "The".
 - (17) 40 C.F.R. section 124.10(d)(1)(vii) to (d)(1)(ix) is excluded from incorporation.
 - (18) In 40 C.F.R. section 124.10(d)(2)(iii), replace "; and" with a period.
 - (19) 40 C.F.R. section 124.10(d)(2)(iv) is excluded from incorporation.
 - (20) In 40 C.F.R. section 124.10(e), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)" and "(for EPA-issued permits)".
- (j) The incorporation by reference of 40 C.F.R. section 124.11 is amended as follows: delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)" and "or the permit application for 404 permits when no draft permit is required (see §233.39)".

(k) The incorporation by reference of 40 C.F.R. section 124.12 is amended as follows:

- (1) In 40 C.F.R. section 124.12(a), delete "(Applicable to State programs, see §§123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)".
- (2) In 40 C.F.R. section 124.12(a)(3), delete "For RCRA permits only,".
- (3) In 40 C.F.R. section 124.12(b), delete "and EPA is the permitting authority".
- (4) In 40 C.F.R. section 124.12(c), replace "hearing officer" with "presiding officer".

(l) The incorporation by reference of 40 C.F.R. section 124.13 is amended as follows: replace "EPA documents" with "EPA or state department of health documents".

(m) The incorporation by reference of 40 C.F.R. section 124.15 is amended as follows:

- (1) In the section title of 40 C.F.R. section 124.15, replace "permit." with "permit; appeal of permits.".
- (2) In 40 C.F.R. section 124.15(a), replace "This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under §124.19 of this Part." With "The notice of final permit decision shall inform the persons authorized by subsection (c) to request a contested case hearing of the procedures for requesting such a hearing. Chapter 11-1 procedures for contested case hearings apply to contested case hearings for permits."
- (3) Replace 40 C.F.R. section 124.15(b)(2) in its entirety to read: "(2) A written request for a contested case hearing is made within thirty days of the date of issuance of the final permit decision by a person authorized by subsection (c) to request a contested case hearing; or".
- (4) Add a section 40 C.F.R. section 124.15(c) to read: "(c) After the issuance of a final

permit decision, a contested case hearing may be requested in writing by:

- (1) The permittee whose permit has been modified, or revoked and reissued, or terminated;
- (2) The person whose application for a permit has been denied; and
- (3) And person whose legal rights, duties, or privileges will be specially, personally, and adversely affected by the permit decision and who has participated as an adversary during the public comment period or public hearing in the manner provided by 40 C.F.R. sections 124.11 to 124.14, as incorporated and amended in this chapter."

(n) 40 C.F.R. section 124.16 is excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A.

(o) The incorporation by reference of 40 C.F.R. section 124.17 is amended as follows:

- (1) Replace the introductory paragraph of 40 C.F.R. section 124.17(a) to read: "(a) At the time that any final permit decision is issued under 40 C.F.R. section 124.15, as incorporated and amended in this chapter, the director shall issue a response to comments. This response shall:".
- (2) In 40 C.F.R. section 124.17(a)(2), delete "or the permit application (for section 404 permits only)".
- (3) In 40 C.F.R. section 124.17(b), replace "For EPA-issued permits, any" with "Any".
- (4) Replace 40 C.F.R. section 124.17(c) in its entirety to read: "The response to comments shall be available to the public.".

(p) The incorporation by reference of 40 C.F.R. section 124.18 is amended as follows:

- (1) In the section heading for 40 C.F.R. section 124.18, delete "when EPA is the permitting authority".

- (2) 40 C.F.R. section 124.18(a)(5) is excluded from incorporation.
- (3) Replace 40 C.F.R. section 124.18(d) in its entirety to read: "This section applies to all final permits when the draft permit was subject to the administrative record requirements of 40 C.F.R. section 124.9, as incorporated and amended in this chapter."
- (q) 40 C.F.R. sections 124.19, 124.20, and 124.21 are excluded from the incorporation by reference of 40 C.F.R. part 124, subpart A. [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-271.1-4 Amendments to the incorporation of 40 C.F.R. part 124, subpart B. (a) The incorporation by reference of 40 C.F.R. section 124.31 is amended as follows:

- (1) Replace 40 C.F.R. section 124.31(a) in its entirety to read: "(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 C.F.R. section 270.42, as incorporated and amended in section 11-270.1-1. The requirements of this section do not apply to permit modifications under 40 C.F.R. 270.42, as incorporated and amended in section 11-270.1-1, or to applications that are submitted for the sole purpose of conducting post-closure

activities or post-closure activities and corrective action at a facility."

- (2) In 40 C.F.R. section 124.31(b), delete ", or to the submission of a written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J),".
- (3) In 40 C.F.R. section 124.31(c), delete ", or with the written Notice of Intent to be covered by a RCRA standardized permit (see 40 CFR part 270, subpart J)".

(b) The incorporation by reference of 40 C.F.R. section 124.32 is amended as follows: replace 40 C.F.R. section 124.32(a) in its entirety to read: "(a) Applicability. The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 C.F.R. section 270.51, as incorporated and amended in section 11-270.1-1. The requirements of this section do not apply to permit modifications under 40 C.F.R. 270.42, as incorporated and amended in section 11-270.1-1, or to permit applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility."

(c) The incorporation by reference of 40 C.F.R. section 124.33 is amended as follows: replace 40 C.F.R. section 124.33(a) in its entirety to read: "(a) Applicability. The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units." [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 11-271 and the adoption of chapter 11-271.1, 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