DEPARTMENT OF HEALTH

Repeal of Chapter 11-273 and
Adoption of Chapter 11-273.1
Hawaii Administrative Rules

May 5, 2017

SUMMARY

1. Chapter 11-273, Hawaii Administrative Rules, is repealed.

2. Chapter 11-273.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for Universal Waste Management", is adopted.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-273

HAZARDOUS WASTE MANAGEMENT
STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

REPEALED

§§11-273-1 to 11-273-81 Repealed. [R
JUL 17 2017]

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 11-273.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS FOR UNIVERSAL WASTE MANAGEMENT

§11-273.1-1 Incorporation of 40 C.F.R part 273
§11-273.1-2 Substitution of state terms for federal terms
§11-273.1-3 Amendments to the incorporation of 40 C.F.R. part 273, subpart A
§11-273.1-4 Amendments to the incorporation of 40 C.F.R. part 273, subpart B
§11-273.1-5 Amendments to the incorporation of 40 C.F.R. part 273, subpart C
§11-273.1-6 Amendments to the incorporation of 40 C.F.R. part 273, subpart D
§11-273.1-7 Amendments to the incorporation of 40 C.F.R. part 273, subpart E
§§11-273.1-8 to 11-273.1-9 (Reserved)
§11-273.1-10 Imports of universal waste

Historical note: This chapter is based substantially upon chapter 11-273. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R JUL 17 2017]

§11-273.1-1 Incorporation of 40 C.F.R. part 273. Title 40, part 273 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

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part of this chapter subject to the substitutions and amendments set forth in sections 11-273.1-2 to 11-273.1-9. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-2 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 273, 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".

(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 of 40 C.F.R. part 273, as incorporated and amended in this chapter: 40 C.F.R. sections 273.32(a)(3) and 273.52(a).

(c) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 273, as incorporated and amended in this chapter, shall mean the Hawaii Administrative Rules analog of

the referenced federal regulation, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as listed in subsection (d). The Hawaii Administrative Rule analogs are as follows:

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 references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 273, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references in 40 C.F.R. section 273.52. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-3 Amendments to the incorporation of 40 C.F.R. part 273, subpart A. (a) The incorporation by reference of 40 C.F.R. section 273.1 is amended as follows:

(1) In 40 C.F.R. section 273.1(a)(3), delete "and".

(2) In 40 C.F.R. section 273.1(a)(4), replace the period at the end with "; and".

(3) In 40 C.F.R. section 273.1(a), add a paragraph (5) to read: "(5) Electronic items

as described in 40 C.F.R. section 273.6, as incorporated and amended in this chapter."

(4) In 40 C.F.R. section 273.1(b), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

(b) The incorporation by reference of 40 C.F.R. part 273 is amended by adding a new section, 40 C.F.R. section 273.6, to read:

"§273.6 Applicability—Electronic items.

(a) Electronic items covered under chapter 11-273.1. The requirements of this chapter apply to persons managing electronic items, as described in 40 C.F.R. section 273.9, as incorporated and amended in this chapter, except those listed in paragraph (b) of this section.

(b) Electronic items not covered under chapter 11-273.1. The requirements of this chapter do not apply to persons managing the following electronic items:

(1) Electronic items that are not yet wastes under chapter 11-261.1. A universal waste handler who claims that an electronic item is not a waste must manage that item as a product and bears the burden of demonstrating that there is a known market or disposition for its re-use as an electronic item.

(2) Electronic items that were previously identified as wastes under chapter 11-261.1 but are no longer identified as wastes (e.g., a discarded electronic item that is refurbished and is returned to service).

(3) Electronic items that do not exhibit a toxicity characteristic of a hazardous waste as set forth in chapter 11-261.1 and that are not otherwise identified as hazardous waste pursuant to chapter 11-261.1. A universal waste handler who claims that a waste electronic item does not exhibit a toxicity characteristic bears the burden of demonstrating that the electronic item is

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not a hazardous waste. Assume all waste electronic items to be hazardous unless you evaluate and can document that they are non-hazardous (e.g., pass the Toxicity Characteristic Leaching Procedure [TCLP] test, as described in 40 C.F.R. sections 260.11 and 261.24 and incorporated by reference in chapters 11-260.1 and 11-261.1, and are not otherwise identified as hazardous waste pursuant to chapter 11-261.1)."

(c) The incorporation by reference of 40 C.F.R. section 273.9 is amended as follows:

(1) The following definitions are amended as follows:

"Destination facility" definition. Delete both instances of "(a) and (c)".

"Large Quantity Handler of Universal Waste" definition. Replace "or lamps" with "lamps, or electronic items".

"Small Quantity Handler of Universal Waste" definition. Replace "or lamps" with "lamps, or electronic items".

"Universal Waste" definition. Replace "§273.4; and (4) Lamps as described in §273.5" with "40 C.F.R. section 273.4, as incorporated and amended in this chapter; (4) Lamps as described in 40 C.F.R. section 273.5, as incorporated and amended in this chapter; and (5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in this chapter".

"Universal Waste Handler" definition. Delete both instances of "(a) or (c)".

(2) Add the following additional definitions in alphabetical order:

"Circuit board" means the part of an electronic device that mechanically supports and electrically connects electronic components (such as capacitors, diodes, power sources, resistors, sensors, switches,

transducers, transistors, etc.) using conductive tracks.

"Electronic item," also referred to as "universal waste electronic item," means a device containing a circuit board, or other complex circuitry, or a video display. Indicators that a device likely contains a circuit board include the presence of a keypad, touch screen, any type of video or digital display, or common electronic ports or connectors, such as serial, parallel, Rj45 ("network"), or USB. Examples of common universal waste electronic items include, but are not limited to: computer central processing unit; computer monitor; portable computer (including notebook, laptop, and tablet computer); devices designed for use with computers (also known as computer peripherals) such as keyboard, mouse, desktop printer, scanner, and external storage drive; server; television; digital video disc (DVD) recorder or player; videocassette recorder or player (VCR); eBook reader; digital picture frame; fax machine; video game equipment; cellular telephone; answering machine; digital camera; portable music or video player; wireless paging device; remote control; and smoke detector. Electronic item does not include a device that is physically a part of, connected to, or integrated within a large piece of equipment that is not meant to be hand-carried by one person (for example, an automobile, large medical equipment, or white goods as defined in chapter 11-58.1). A device is considered physically a part of, connected to, or integrated within a large piece of equipment if the device cannot be easily disconnected from the large equipment by a layperson without specialized training. When a device containing a circuit board or a video

display is removed, separated, or separate from the large piece of equipment that it is meant to be a part of, it is a universal waste electronic item.

"Video display" means the part of an electronic device capable of presenting images electronically on a screen viewable by the device user. A video display may use cathode ray tube, liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-4 Amendments to the incorporation of 40 C.F.R. part 273, subpart B. (a) The incorporation by reference of 40 C.F.R. section 273.13 is amended by adding a subsection (e) to read: "(e) Electronic items. A small quantity handler of universal waste must manage electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Electronic items shall be stored in
   (i) A building, with a permanent roof and floor, that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation; or
   (ii) A closed and secure container that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation.

(2) All universal waste electronic items must be stored in a building or container meeting the requirements of paragraph (1) within 24 hours of being discarded.

(3) A small quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic item that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, and compatible with the contents of the electronic item, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(4) A small quantity handler of universal waste may conduct the following activities:

(i) Sorting electronic items by type;

(ii) Mixing electronic item types in one container;

(iii) Removal of discreet assemblies that are typically removed by consumers for replacement during the normal operation of an electronic item (e.g., battery packs, ink cartridges). A universal waste handler shall conduct the removal of the discrete assemblies in the manner that is prescribed in the operating manual for the electronic item, or in a manner that would otherwise reasonably be employed during the normal operation of the electronic item.

(iv) Removal of separable non-electronic pieces that are intended for assembly by retailers or consumers (e.g., monitor saucer, wall hanging bracket, cell phone case).

(5) A small quantity handler who generates other solid waste (e.g., battery packs, monitor saucers) as a result of the activities listed in paragraph (4) shall make a hazardous waste determination pursuant to 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1.

(i) If the waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 11-260.1 to 11-270.1. If the waste is another type of

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universal waste (e.g., a battery), it may be alternatively managed under this chapter. The handler is considered the generator of the waste and is subject to chapter 11-262.1.

(ii) If the waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, and local solid waste regulations."

(b) The incorporation by reference of 40 C.F.R. section 273.14 is amended as follows:

(1) In 40 C.F.R. section 273.14(a), replace "Universal waste batteries (i.e., each battery), or a container in which the batteries are contained" with "Each battery, or container or pallet containing universal waste batteries".

(2) In 40 C.F.R. section 273.14, add a subsection (f) to read: "(f) Each electronic item, or container or pallet containing universal waste electronic items, must be labeled or marked clearly with one of the following phrases: "Universal Waste—electronic item(s)," or "Waste electronic item(s)," or "Used electronic item(s)."" [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-5 Amendments to the incorporation of 40 C.F.R. part 273, subpart C. (a) The incorporation by reference of 40 C.F.R. section 273.32 is amended as follows: replace 40 C.F.R. section 273.32(b) in its entirety to read: "(b) This notification must include a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(b) The incorporation by reference of 40 C.F.R. section 273.33 is amended by adding a paragraph (e) to read: "(e) Electronic items. A large quantity handler

of universal waste must manage electronic items in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Electronic items shall be stored in:
   (i) A building, with a permanent roof and floor, that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation; or
   (ii) A closed and secure container that is constructed and maintained to minimize breakage of electronic items and to prevent exposure of the electronic items to precipitation.

(2) All universal waste electronic items must be stored in a building or container meeting the requirements of paragraph (1) within 24 hours of being discarded.

(3) A large quantity handler of universal waste shall immediately clean up and place in a container any universal waste electronic item that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, and compatible with the contents of the electronic item, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(4) A large quantity handler of universal waste may conduct the following activities:
   (i) Sorting electronic items by type;
   (ii) Mixing electronic item types in one container;
   (iii) Removal of discreet assemblies that are typically removed by consumers for replacement during the normal operation of an electronic item (e.g., battery packs, ink cartridges). A universal waste handler shall conduct the removal of the discrete assemblies in the manner that is prescribed

in the operating manual for the electronic item, or in a manner that would otherwise reasonably be employed during the normal operation of the electronic item; and

(iv) Removal of separable non-electronic pieces that are intended for assembly by retailers or consumers (e.g., monitor saucer, wall hanging bracket, cell phone case).

(5) A large quantity handler who generates other solid waste (e.g., battery packs, monitor saucers) as a result of the activities listed in paragraph (4) shall make a hazardous waste determination pursuant to 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1.

(i) If the waste exhibits a characteristic of hazardous waste, it is subject to all applicable requirements of chapters 11-260.1 to 11-270.1. If the waste is another type of universal waste (e.g., a battery), it may be alternatively managed under this chapter. The handler is considered the generator of the waste and is subject to chapter 11-262.1.

(ii) If the waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, and local solid waste regulations."

(c) The incorporation by reference of 40 C.F.R. section 273.34 is amended as follows:

(1) In 40 C.F.R. section 273.34(a), replace "Universal waste batteries (i.e., each battery), or a container in which the batteries are contained" with "Each battery, or container or pallet containing universal waste batteries".

(2) In 40 C.F.R. section 273.34, add a subsection (f) to read: "(f) Each electronic item, or container or pallet containing universal waste electronic items, must be labeled or marked clearly with one of the following phrases: "Universal Waste—

electronic item(s)," or "Waste electronic item(s)," or "Used electronic item(s)."

(d) The incorporation by reference of 40 C.F.R. section 273.39 is amended as follows: in 40 C.F.R. section 273.39(a)(2) and 273.39(b)(2), replace "thermostats" with "mercury-containing equipment, lamps, electronic items". [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-6 Amendments to the incorporation of 40 C.F.R. part 273, subpart D. The incorporation by reference of 40 C.F.R. part 273 is amended by adding a new section 273.57, to read:

"§273.57 Tracking universal waste shipments.

(a) Records of receipt of shipments. A transporter of universal waste must keep a record of each shipment of universal waste received by the transporter. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:
   (1) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;
   (2) The quantity of each type of universal waste received (e.g., batteries, pesticides, mercury-containing equipment, lamps, electronic items); and
   (3) The date of receipt of the shipment of universal waste.

(b) Records of delivery of shipments. A transporter of universal waste must keep a record of each shipment of universal waste delivered to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment

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of universal waste sent must include the following information:

(1) The name and address of the universal waste handler, destination facility, or foreign destination to which the universal waste was sent;

(2) The quantity of each type of universal waste sent (e.g., batteries, pesticides, mercury-containing equipment, lamps, electronic devices); and

(3) The date the shipment of universal waste was delivered to the receiving universal waste handler, destination facility, or foreign destination.

(c) Record retention.

(1) A transporter of universal waste must retain the records described in subsection (a) for at least three years from the date of receipt of a shipment of universal waste.

(2) A transporter of universal waste must retain the records described in subsection (b) for at least three years from the date of delivery of a shipment of universal waste." [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-7 Amendments to the incorporation of 40 C.F.R. part 273, subpart E. (a) The incorporation by reference of 40 C.F.R. section 273.60 is amended as follows: in 40 C.F.R. section 273.60(a), replace "section 3010 of RCRA" with "section 342J-6.5, HRS".

(b) The incorporation by reference of 40 C.F.R. section 273.62 is amended as follows: in 40 C.F.R. section 273.62(a)(2), replace "thermostats" with "mercury-containing equipment, lamps, electronic items". [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§§11-273.1-8 to 11-27.1-9 (Reserved.)

§11-273.1-10 Imports of universal waste. (a) In addition to the requirements of 40 C.F.R. section 273.70, as incorporated and amended in this chapter, any person who imports universal waste from a foreign country into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(b) Any person who imports universal waste from any state into the State must submit the following information in writing to the director within thirty days after the waste has arrived in the State:

(1) The date the waste arrived in the State; and

(2) The disposition of the waste, i.e., storage, treatment, recycling, or disposal.

(c) The requirements of subsections (a) and (b) shall not apply if:

(1) The waste does not stay in the State for more than ten days; and

(2) A generator with an EPA identification number does not assume the generator status for the waste. [Eff JUL 17 2017] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

DEPARTMENT OF HEALTH

The repeal of chapter 11-273 and adoption of chapter 11-273.1, Hawaii Administrative Rules, on the Summary Page dated May 5, 2017, occurred on May 5, 2017 following a public hearing held on December 13, 2016, after public notice was given in The Maui News on November 4, 2016 and in the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on November 7, 2016, and a public hearing held on April 24, 2017, after public notice was given in The Maui News, the Honolulu Star-Advertiser, The Garden Island, Hawaii Tribune-Herald, and West Hawaii Today on March 24, 2017.

The foregoing rulemaking actions shall take effect ten days after filing with the Office of the Lieutenant Governor.

LIEUTENANT GOVERNOR'S OFFICE
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VIRGINIA PRESSLER, M.D.
Director of Health

DAVID Y. IGE
Governor of Hawaii

Dated: 7/7/17

APPROVED AS TO FORM:

Wade H. Hargrove III
Deputy Attorney General

Filed

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