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DEPARTMENT OF HEALTH
ENVIRONMENTAL MANAGEMENT DIVISION
SOLID AND HAZARDOUS WASTE BRANCH
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Temporary Emergency Permits to Treat, Store or Dispose of Hazardous Waste

The Department of Health, Solid and Hazardous Waste Branch, Hazardous Waste Section is responsible for the issuance of temporary emergency permits (TEPs) to treat, store or dispose of hazardous waste within the State of Hawaii. The Department's authority to do so is found in Hawaii Administrative Rules (HAR) §11-270-61. The Department has recently been made aware of some uncertainty regarding to whom the TEPs should be issued and what conditions that permittee will be subject to. This guidance seeks to promote a better understanding of the application process, serve as a basis for the review of future TEP applications, and ensure consistency in the review of these applications.

Question: When will a TEP be issued?

Answer: Pursuant to HAR §11-270-61(a), the Department issues TEPs where there is an "imminent and substantial endangerment to human health or the environment." A determination of endangerment will, of course, be made on the basis of the particular facts presented. The Department will continue to view unstable unexploded ordnance, expired ammunition and illegal fireworks as hazardous wastes that exhibit an unusual risk to the public and the environment. The risk of exposure, the highly specialized nature of munitions disposal and the need for special care in the handling of explosive material will often necessitate the issuance of a TEP.

Question: To whom will a TEP be issued?

Answer: The question of who should get the TEP is determined by an examination of the relevant facts surrounding the proposed treatment, storage or disposal. HAR §11-270-61(a) gives the Department authority to issue TEPs to a non-permitted facility or to a permitted facility seeking to engage in treatment, storage or disposal activities not already covered by an existing permit. Therefore, all TEPs must be issued to the facility where the treatment, storage or disposal activities are being undertaken. If multiple parties are needed to conduct the transportation,

treatment, storage or disposal activities, those entities may be recorded in the TEP, but the TEP itself will only be issued to the owner or operator of the facility where those activities are going to take place. In other words, although there will be only one permittee, there may be other persons, acting with the knowledge and consent of the permittee and the Department, assisting the permittee with the treatment, storage or disposal of a particular hazardous waste.

Question: What will the permit conditions in a TEP look like?

The specific conditions governing the treatment, storage or disposal activities proposed in an application for a TEP will inevitably depend upon an analysis of the particular facts. HAR §11-270-61(b)(6) requires the Department to incorporate “to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and chapters 11-264 and 11-266.” HAR chapter 11-264 contains the requirements for permanent, permitted treatment, storage or disposal facilities (TSDFs). HAR chapter 11-266 governs waste military munitions. Chapter 11-264 is complex and voluminous. Only those elements of chapter 11-264 that are appropriate for inclusion in a TEP will be utilized. The Department’s basic template for TEP conditions is designed with the temporary, emergency nature of the situation in mind and under no circumstances should it be overly burdensome on the permittee. An overview of the general TEP conditions can be stated as follows:

1. Obtain a provisional EPA identification number for your facility from the Hazardous Waste Section or, if you already have a facility identification number, provide it in your application.
2. Submit a work plan describing in reasonable detail the proposed activities associated with the proposed treatment, storage or disposal.
3. Conduct yourself in accordance with and utilize only those individuals or companies identified in your work plan.
4. Verify through visual inspection, testing, or other method as described in your work plan, that all hazardous waste has been safely treated, stored or disposed.
5. Provide a brief closure report to the Hazardous Waste Section certifying compliance with the work plan (explaining any variances if necessary) and certifying that no hazardous constituents remain above regulatory levels.

Question: In addition to the conditions contained in and part of the TEP, are there any other requirements, obligations or legal implications?

Answer: Although factually speaking, any facility that obtains a TEP is, by definition, conducting the activities of a TSDF, that facility will not, by virtue of obtaining an EPA identification number or a TEP, become a permanent TSDF regulated by HAR chapter 264. As an exception to the requirement that a facility treating,

storing or disposing of hazardous waste obtain a “permanent” chapter 264 permit, the TEP of HAR 270-61 only obligates a permittee to comply with the terms and conditions of the TEP itself. In other words, the requirements and obligations of chapter 11-264 apply only to the extent that they were incorporated as a term or condition of the TEP.

Example: The United States Coast Guard discovers unidentified munitions during an inspection of a jointly utilized military storage facility at Pearl Harbor. The United States Navy assists in the identification of the munitions and determines that it is old, relatively unstable, and should be sent for disposal. The United States Army is contacted by the Navy and offers use of its range at Schofield Barracks. After receiving an application from the Army, the Hazardous Waste Section issues a TEP to the Army identifying Schofield as a facility temporarily authorized to treat, store or dispose of the hazardous waste munitions identified in the TEP application. The treatment, storage and disposal activities may be conducted with the assistance of any appropriately trained and equipped personnel (including private contractors) identified in the TEP. The Department will consider the treatment, storage and disposal activities complete and the terms and conditions of the TEP fully satisfied once it has received the closure report. If the closure report identifies any outstanding issues, the Department, at its discretion, may require further action consistent with but not outside the scope of the terms and conditions of the TEP.

Questions regarding this discussion of the Department’s temporary emergency permitting practice and procedure, should be directed to Gracelda Simmons of the Hazardous Waste Section at 586-4226.