DEPARTMENT OF HEALTH

Amendment and Compilation of Chapters 11-260.1, 11-261.1, 11-262.1, 11-263.1, 11-264.1, 11—265.1, 11-266.1, 11-268.1, 11-270.1, 11-271.1, 11-273.1, and 11-279.1
Hawaii Administrative Rules

ADOPTION DATE

1. Chapter 11-260.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: General Provisions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 260.1

HAZARDOUS WASTE MANAGEMENT:
GENERAL PROVISIONS

§11-260.1-1 Incorporation of 40 C.F.R. part 260
§11-260.1-2 Substitution of state terms and citations for federal terms and citations
§11-260.1-3 Amendments to the incorporation of 40 C.F.R. part 260, subpart A
§11-260.1-4 Amendments to the incorporation of 40 C.F.R. part 260, subpart B
§11-260.1-5 Amendments to the incorporation of 40 C.F.R. part 260, subpart C

Historical note: This chapter is based substantially upon chapter 11-260. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-260.1-1 Incorporation of 40 C.F.R. part 260. Title 40, part 260 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-260.1-2 to 11-260.1-5. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 260, 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", "Regional Administrator or State Director", 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 260, as incorporated and amended in this chapter:

(1) 40 C.F.R. section 260.10 definitions of "Administrator", "Electronic import-export reporting compliance date", "Electronic manifest", "Electronic Manifest System", "EPA hazardous waste number", "EPA identification number", "EPA region", "Equivalent method", "Hazardous waste constituent", and "Regional Administrator", "Replacement unit", and "User of the electronic manifest system".

(2) 40 C.F.R. sections 260.2, 260.4, 260.5, 260.11, and 260.34(a)(2) and (3).

(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 260, 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~~] Rules 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 260, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: the references in the definitions "Designated facility" and "Equivalent method" in 40 C.F.R. section 260.10. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-3 Amendments to the incorporation of 40 C.F.R. part 260, subpart A. (a) The incorporation by reference of 40 C.F.R. section 260.1 is amended as follows: 40 C.F.R. section 260.1(b)(5) and (6) is excluded from incorporation.

(b) The incorporation by reference of 40 C.F.R. section 260.2 is amended as follows:

(1) In 40 C.F.R. section 260.2(a), [~~add~~] insert "Any information provided to the state department of health under chapters 11-260.1 to 11-268.1 will be made available to the public to the extent and in the manner authorized by sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 92F, HRS, and of chapter 2-71." at the end of the subsection.

(2) In 40 C.F.R. section 260.2(b), [~~add~~] insert "Except as provided under paragraph (c)(1) of this section, any person who submits information to the state department of health in accordance with chapters 11-260.1 to 11-268.1 may assert a claim of business confidentiality covering part or all of that information. Information covered by such a claim will be disclosed by the department only to the extent, and by means of the procedures, set forth in sections 342J-14

and 342J-14.5, HRS, and any applicable provisions of chapter 92F, HRS, and of chapter 2-71." at the end of the subsection.

(3) In 40 C.F.R. section 260.2(c)(1), [~~add~~] insert "to EPA" after "be asserted" and [~~add~~] insert "After July 17, 2017, no claim of business confidentiality may be asserted to the state department of health by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with 40 C.F.R. section 262.20(a)(3), as incorporated and amended in this chapter." at the end of the paragraph.

(4) In 40 C.F.R. section 260.2(d)(1), delete "cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of this chapter, and with respect to information contained in" and ", and 267.71".

(5) In 40 C.F.R. section 260.2(d)(2), delete "any cathode ray tube export documents prepared, used and submitted under §§ 261.39(a)(5) and 261.41(a) of this chapter, and", ", and 267.71", "and cathode ray tube exports", and "cathode ray tube exports or".

[Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp]
(Auth: HRS §§342J-4, 342J-31, 342J-35)
(Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-4 Amendments to the incorporation of 40 C.F.R. part 260, subpart B. (a) The incorporation by reference of 40 C.F.R. section 260.10 is amended as follows:

(1) The following definitions are excluded from incorporation: "AES filing compliance date",

"Carbon dioxide stream", "Cathode ray tube or CRT", "CRT collector", "CRT exporter", "CRT glass manufacturer", "CRT processing", and "State".

(2) The following definitions are amended as follows:

"Active portion" definition. Replace "the effective date of part 261 of this chapter" with "November 19, 1980".

"Airbag waste collection facility" definition. Replace "§ 261.4(j) of this chapter" with 40 C.F.R. section 261.4(j) or corresponding regulations of any authorized state".

"Airbag waste handler" definition. Replace "this chapter" with "40 C.F.R. parts 260 to 279 or corresponding regulations of any authorized state".

"Central accumulation area" definition. Delete "A central accumulation area at an eligible academic entity that chooses to operate under 40 CFR part 262 subpart K is also subject to §262.211 when accumulating unwanted material and/or hazardous waste."

"Designated facility" definition. [~~Add~~] Insert "or corresponding regulations of any authorized state" after "part 266 of this chapter", after "§262.20", and after "§265.72(f) of this chapter".

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

"EPA hazardous waste number" definition. Insert "or the State" after "by EPA".

"EPA identification number" definition. Insert "or the State" after "by EPA".

"Equivalent method" definition. [~~Add~~] Insert "and approved by the director" at the end of the sentence.

"Existing hazardous waste management (HWM) facility or existing facility"

definition. Replace "on or before November 19, 1980" with "on or before:

(1) November 19, 1980;

(2) The effective date of statutory or regulatory changes made under RCRA prior to June 18, 1994 that made the facility subject to the requirement to have an RCRA permit; or

(3) The effective date of statutory or regulatory changes made under chapter 342J, HRS, after June 18, 1994 that made the facility subject to the requirement to have a permit under section 342J-30(a), HRS".

"Existing tank system or existing component" definition. Replace "on or prior to July 14, 1986" with "on or prior to July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks".

"Facility" definition. Delete "or 267.101" and replace "RCRA Section 3008(h)" with "42 U.S.C. section 6928(h) or section 342J-36, HRS".

"Final closure" definition. Replace "§262.34" with "40 C.F.R. sections 262.14 to 262.17, as incorporated and amended in section 11-262.1-1".

"Inactive portion" definition. Replace "the effective date of part 261 of this chapter" with "November 19, 1980".

"New hazardous waste management facility" definition. Replace in its entirety to read: "New hazardous waste management facility or new facility means a hazardous waste management facility which is not included in the definition of an existing hazardous waste management facility."

"New tank system or new tank component" definition. Replace both occurrences of "July 14, 1986" with "July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks".

"Person" definition. Replace in its entirety to read: "Person means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity."

"Remediation waste management site" definition. [~~Add~~] Insert "or section 342J-36, HRS" after "40 CFR 264.101".

"Universal waste" definition. [~~Replace "(3) Mercury-containing equipment as described in §273.4 of this chapter; and (4) Lamps as described in §273.5 of this chapter" with "(3) Mercury-containing equipment as described in 40 C.F.R. section 273.4, as incorporated and amended in section 11-273.1-1; (4) Lamps as described in 40 C.F.R. section 273.5, as incorporated and amended in section 11-273.1-1; and (5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1".~~] Replace "; and" with ";" and replace the period at the end of the definition with "; (6) Electronic items as described in 40 C.F.R. section 273.6.1, as incorporated and amended in section 11-273.1-1; and (7) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in section 11-273.1-1".

"Universal waste handler" definition. [~~Delete both instances of "(a) or (c)".~~] Replace "A person who treats (except under the provisions of 40 CFR 273.13(a) or (c), or 40 CFR 273.33(a) or (c)), disposes of, or recycles (except under the provisions of 40 CFR 273.13(e) or 40 CFR 273.33(e)) universal waste;" with "A person who treats, disposes of, or recycles universal waste (except

under the provisions of 40 C.F.R. section 273.13 or 273.33, as incorporated and amended in section 11-273.1-1);".

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

"Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

"Any state" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other U.S. territory.

"Authorized state" or "approved state" means a State which has been approved or authorized by EPA under 40 C.F.R. part 271.

"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.

"CWA" means the federal Clean Water Act, 33 U.S.C. section 1251 et seq.

"Director", or "director of health", means the director of the State of Hawaii department of health or the director's authorized agent.

"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.

"HRS" means the Hawaii Revised Statutes.

"HSWA" means Hazardous and Solid Waste Amendments.

"HSWA Drip Pad" means a drip pad handling F032 waste, as defined in 40 C.F.R. section 261.31, as incorporated and amended in section 11-261.1-1.

"HSWA Tank" means a tank owned or operated by a generator of less than one

thousand kilograms of hazardous waste in any single calendar month; or, a new underground tank; or, an existing underground tank that cannot be entered for inspection.

"Land disposal" means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

"Non-HSWA Drip Pad" means a drip pad handling F034 and F035 wastes, as defined in 40 C.F.R. section 261.31, as incorporated and amended in section 11-261.1-1.

"Non-HSWA Tank" means all tanks except HSWA tanks as defined in this section.

"Photovoltaic cell" means a specialized semiconductor diode designed to convert solar radiation into electrical energy. Photovoltaic cells may be composed of, but are not limited to, monocrystalline silicon, polycrystalline silicon, amorphous silicon, cadmium telluride, copper indium gallium selenide, and gallium indium phosphide/gallium arsenide/gallium, and perovskite. Photovoltaic cells are managed as solar panels.

"Solar panel" or "solar photovoltaic panel" means a device consisting of one or more electrically connected photovoltaic cells that are designed to convert solar radiation into electrical energy. Solar panel includes integrated components that cannot be separated without breaking the solar panel glass. Examples of integrated components include, but are not limited to, protective glass, conductive metal contact, metal framing the photovoltaic cells,

housing or pocket holding the photovoltaic cells, and top and back layer. Photovoltaic cells that are not electrically connected are managed as solar panels. Solar panel does not include solar thermal panels that do not contain photovoltaic cells.

"Solar photovoltaic system" means a set of components consisting of one or more solar panels and ancillary components such as, but not limited to, metal frames used to support the solar panels, connectors, junction boxes, batteries, inverters, wires, and cables that are connected to the solar panels. Ancillary components are those components of the system that can be manually separated from the solar panel without breaking the solar panel glass.

"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.

(b) The incorporation by reference of 40 C.F.R. section 260.11 is amended as follows:

(1) In 40 C.F.R. section 260.11(a), delete "and 278".

(2) In 40 C.F.R. section 260.11(c)(3)(xxvii), delete "267.190(a),".

(3) In 40 C.F.R. section 260.11(d)(1), delete ", 267.202(b)". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-260.1-5 Amendments to the incorporation of 40 C.F.R. part 260, subpart C. (a) The incorporation

by reference of 40 C.F.R. section 260.20 is amended as follows:

(1) In 40 C.F.R. section 260.20(a), delete "Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to part 261, 264 or 265 of this chapter. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from §261.3 of this chapter or the lists of hazardous wastes in subpart D of part 261 of this chapter."

(2) In 40 C.F.R. section 260.20(c) and (e), delete "in the Federal Register".

(b) 40 C.F.R. sections 260.21 and 260.22 are excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 260.34 is amended as follows: in 40 C.F.R. section 260.34(a), replace "also" with "only"." [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

2. Chapter 11-261.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Identification and Listing of Hazardous Waste", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 261.1

HAZARDOUS WASTE MANAGEMENT:
IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

§11-261.1-1 Incorporation of 40 C.F.R. part 261
§11-261.1-2 Substitution of state terms and citations for federal terms and citations
§11-261.1-3 Amendments to the incorporation of 40 C.F.R. part 261, subpart A
§11-261.1-4 Amendments to the incorporation of 40 C.F.R. part 261, subpart B
§11-261.1-5 (Reserved)
§11-261.1-6 Amendments to the incorporation of 40 C.F.R. part 261, subpart D
§11-261.1-7 Amendments to the incorporation of 40 C.F.R. part 261, subpart E
§§11-261.1-8 to 11-261.1-9 (Reserved)
§11-261.1-10 Amendments to the incorporation of 40 C.F.R. part 261, subpart H
§11-261.1-11 (Reserved)
§11-261.1-12 Amendments to the incorporation of 40 C.F.R. part 261, subpart J
§§11-261.1-13 to 11-261.1-14 (Reserved)
§11-261.1-15 Amendments to the incorporation of 40 C.F.R. part 261, subpart M
§§11-261.1-16 to 11-261.1-28 (Reserved)

§11-261.1-29 Amendments to the incorporation of 40 C.F.R. part 261, subpart AA
§11-261.1-30 Amendments to the incorporation of 40 C.F.R. part 261, subpart BB
§11-261.1-31 Amendments to the incorporation of 40 C.F.R. part 261, subpart CC
§11-261.1-32 Amendments to the incorporation of 40 C.F.R. part 261 appendices

Historical note: This chapter is based substantially upon chapter 11-261. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-261.1-1 Incorporation of 40 C.F.R. part 261. Title 40, part 261 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-261.1-2 to 11-261.1-32. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 261, 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", "Regional Administrator or

State Director", 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 for all 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 3010 of RCRA" and "section 3010 of the Act" shall be replaced with "section 342J-6.5, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 261, as incorporated and amended in this chapter:

(1) 40 C.F.R. section 261.4(a)(24)(v)(B)(3).

(2) 40 C.F.R. section 261.4(a)(25).

(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 261, 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 subsections (d) and (e). The Hawaii Administrative [~~Rule~~] Rules 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 261, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) The references in 40 C.F.R. sections 261.4(b)(18)(vi)(A) and (B), 261.1033(n)(1)(i), 261.1033(n)(2)(i), and 261.1033(n)(3)(i).

(2) The reference to 40 C.F.R. section 260.2 in 40 C.F.R. section 261.4(a)(25)(v).

(e) 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 261, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations and corresponding regulations of any state authorized under 40 C.F.R. part 271: the references in 40 C.F.R. section 261.4(a)(24)(v)(B)(2). [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-3 Amendments to the incorporation of 40 C.F.R. part 261, subpart A. (a) The incorporation by reference of 40 C.F.R. section 261.1 is amended as follows:

(1) In 40 C.F.R. section 261.1(a), delete "271,".

(2) In 40 C.F.R. section 261.1(b)(2), replace "sections 3007, 3013, and 7003 of RCRA" with "chapter 342J, HRS" and replace "these sections" with "sections 342J-6, 342J-7,

342J-8, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, HRS,".

(3) Replace 40 C.F.R. section 261.1(b)(2)(i) in its entirety to read: "(i) In the case of sections 342J-6, 342J-7, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, HRS, the department has reason to believe that the material may be a solid waste as the term is defined in section 342J-2, HRS, and a hazardous waste as the term is defined in section 342J-2, HRS; or".

(4) In 40 C.F.R. section 261.1(b)(2)(ii), replace "7003" with "342J-8, HRS".

(5) In 40 C.F.R. section 261.1(c)(1), insert ", spilled, or otherwise contaminated" after "used".

(b) The incorporation by reference of 40 C.F.R. section 261.2 is amended as follows: in 40 C.F.R. section 261.2(c)(2)(ii), delete "listed in §261.33".

(c) The incorporation by reference of 40 C.F.R. section 261.3 is amended as follows:

(1) In 40 C.F.R section 261.3(a)(2)(ii), delete "under §§260.20 and 260.22 of this chapter".

(2) In 40 C.F.R. section 261.3(a)(2)(iv), delete "under §§260.20 and 260.22".

(3) In 40 C.F.R. section 261.3(a)(2)(iv)(A) to (G), replace all instances of "Regional Administrator, or State Director, as the context requires, or an authorized representative ("Director" as defined in 40 CFR 270.2)" with "director".

(4) In 40 C.F.R. section 261.3(c)(2)(ii)(C)(1), replace "subtitle D units" with "solid waste management units under chapter 342H, HRS".

(5) In 40 C.F.R. section 261.3(c)(2)(ii)(C)(2), replace each instance of "EPA region or authorized state" with "state department of health". Replace each instance of "subtitle D unit(s)" with "solid waste management units under chapter 342H, HRS".

(6) In 40 C.F.R. section 261.3(d)(2), delete "under §§260.20 and 260.22 of this chapter".

(d) The incorporation by reference of 40 C.F.R. section 261.4 is amended as follows:

(1) In 40 C.F.R. section 261.4(a)(9)(iii)(E), delete "appropriate Regional Administrator or state" and "Regional Administrator or state".

(2) 40 C.F.R. section 261.4(a)(22) is excluded from incorporation.

(3) In 40 C.F.R. section 261.4(a)(24)(v)(B), insert ", a hazardous waste management permit issued by an authorized state," after each instance of "RCRA part B permit".

(4) In 40 C.F.R. section 261.4(a)(24)(v)(B)(2), replace "EPA" with "appropriate authorities".

(5) In 40 C.F.R. section 261.4(a)(24)(v)(C), insert ", a hazardous waste management permit issued by an authorized state," after "RCRA part B permit".

(6) In 40 C.F.R. section 261.4(a)(24)(v)(C)(2), replace "§ 261.4(a)(24)(v)(B)" with "40 C.F.R. section 261.4(a)(24)(v)(B), as incorporated and amended in section 11-261.1-1, Hawaii Administrative Rules,".

(7) In 40 C.F.R. section 261.4(a)(24)(vi)(E), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

(8) In the introductory paragraph of 40 C.F.R. section 261.4(a)(26) insert ", as defined in 40 C.F.R. section 260.10, as incorporated and amended in section 11-260.1-1," after "Solvent-contaminated wipes".

(9) In 40 C.F.R. section 261.4(a)(26)(i), insert "with the accumulation start date and" after "labeled".

(10) In 40 C.F.R. section 261.4(a)(27)(vi)(A), replace "EPA or the State Director, if the state is authorized for the program" with "the director".

(11) 40 C.F.R. section 261.4(b)(4)(ii) and 261.4(b)(5) is excluded from incorporation.

(12) In 40 C.F.R. section 261.4(b)(10), insert ", chapter 342L, HRS, or rules adopted pursuant to chapter 342L, HRS" after "under part 280 of this chapter".

(13) 40 C.F.R. section 261.4(b)(11) and 261.4(b)(17) is excluded from incorporation.

(14) In the introductory paragraph of 40 C.F.R. section 261.4(b)(18) insert "as defined in 40 C.F.R. section 260.10, as incorporated and amended in section 11-260.1-1," after "Solvent-contaminated wipes,".

(15) In 40 C.F.R. section 261.4(b)(18)(i), insert "with the accumulation start date and" after "labeled".

(16) In 40 C.F.R. section 261.4(b)(18)(vi)(A), insert ", or equivalent state regulations" after "40 CFR parts 264 or 265".

(17) In 40 C.F.R. section 261.4(b)(18)(vi)(B), insert ", or equivalent state regulations" after "40 CFR parts 264, 265, or 266 subpart H".

(18) In 40 C.F.R. section 261.4(c), delete "271".

(19) In 40 C.F.R. section 261.4(e)(1), replace "40 CFR 261.5 and 262.34(d)" with "40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1".

(20) In 40 C.F.R. section 261.4(e)(2)(iv), insert "hazardous waste management permit issued by an authorized state, a" before "RCRA permit".

(21) In 40 C.F.R. section 261.4(e)(3)(iii), replace "Regional Administrator in the Region where the sample is collected" with "director".

(22) In 40 C.F.R. section 261.4(f)(1), (9), and (11), replace "Regional Administrator, or State Director (if located in an authorized State)," with "director".

(23) 40 C.F.R. section 261.4(h) is excluded from incorporation.

[~~(24) The effective date note to 40 C.F.R. section 261.4 is excluded from incorporation.~~]

(e) The incorporation by reference of 40 C.F.R. section 261.6 is amended as follows:

(1) In 40 C.F.R. section 261.6(a)(3)(i)(A), replace "§§262.53, 252.56(a)(1)-(4), (6), and (b), and 262.57" with "§262.83" and replace "subpart E" with "subpart H".

(2) In 40 C.F.R. section 261.6(c)(1), delete "267,".

(3) In 40 C.F.R. section 261.6(d), replace "RCRA permitting" with "hazardous waste management permitting". Replace the comma between "264" and "265" with "or" and delete "or 267".

(f) The incorporation by reference of 40 C.F.R. section 261.7 is amended as follows: [~~the effective date note to 40 C.F.R. section 261.7 is excluded from incorporation.~~] in 40 C.F.R. section 261.7(c), insert "and electronic nicotine delivery systems" after "hazardous waste pharmaceuticals".

(g) The incorporation by reference of 40 C.F.R. section 261.9 is amended as follows:

(1) In 40 C.F.R. section [~~261.9(c),~~] 261.9(d), delete "and".

(2) In 40 C.F.R. section [~~261.9(d),~~] 261.9(e), replace the period at the end [~~with "; and".~~] of the paragraph with a semicolon.

(3) In 40 C.F.R. section 261.9, add a subsection [~~(e)~~] (f) to read: [~~"(e)~~] "(f) Electronic items as described in 40 C.F.R. section [~~273.6,~~] 273.6.1, as incorporated and amended in section [~~11-273.1-1."~~] 11-273.1.1; and".

(4) In 40 C.F.R. section 261.9, add a subsection (g) to read: "(g) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in section 11-273.1-1." [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-4 Amendments to the incorporation of 40 C.F.R. part 261, subpart B. The incorporation by reference of 40 C.F.R. section 261.11 is amended as follows:

(1) In 40 C.F.R. section 261.11(b), replace "section 1004(5) of the Act" with "section 342J-2, HRS".

(2) In 40 C.F.R. section 261.11(c), replace "§261.5(c)" with "40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp]
(Auth: HRS §§342J-4, 342J-31, 342J-35)
(Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-5 (Reserved).

§11-261.1-6 Amendments to the incorporation of 40 C.F.R. part 261, subpart D. (a) The incorporation by reference of 40 C.F.R. section 261.30 is amended as follows:

(1) In 40 C.F.R. section 261.30(a), delete "under §§260.20 and 260.22".

(2) In 40 C.F.R. section 261.30(c), delete "267,".

(3) In 40 C.F.R. section 261.30(d), replace "subject to the exclusion limits for acutely hazardous wastes established in §261.5" with "identified as acute hazardous wastes (H)".

(b) The incorporation by reference of 40 C.F.R. section 261.31 is amended as follows:

(1) In 40 C.F.R. section 261.31(a), delete "under §§260.20 and 260.22".

(2) In 40 C.F.R. section 261.31(b)(2)(i), replace "the units employ" with "the unit employs".

(3) In 40 C.F.R. section 261.31(b)(4)(ii), replace "Regional Administrator or the state regulatory authority" with "Regional Administrator or director".

(c) The incorporation by reference of 40 C.F.R. section 261.32 is amended as follows: in 40 C.F.R. section 261.32(a), delete "under §§260.20 and 260.22".

[~~(d) The incorporation by reference of 40 C.F.R. section 261.33 is amended as follows:~~

~~(1) In the table in 40 C.F.R. section 261.33(e), for each instance of the Hazardous waste No. P075, add "(this listing does not include patches, gums and lozenges that are FDA-approved over-the-counter nicotine replacement therapies)" to the end of the Substance description.~~

~~(2) The effective date note to 40 C.F.R. section 261.33 is excluded from incorporation.~~]

[Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-7 Amendments to the incorporation of 40 C.F.R. part 261, subpart E. 40 C.F.R. part 261, subpart E is excluded from the incorporation by reference of 40 C.F.R. part 261. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-8 to 11-261.1-9 (Reserved).

§11-261.1-10 Amendments to the incorporation of 40 C.F.R. part 261, subpart H. (a) The incorporation by reference of 40 C.F.R. section 261.142 is amended

as follows: in 40 C.F.R. section 261.142(a)(3) and (4), replace "§265.5113(d) of this chapter" with "40 C.F.R. section 265.113(d), as incorporated and amended in section 11-265.1-1".

(b) The incorporation by reference of 40 C.F.R. section 261.143 is amended as follows: in 40 C.F.R. section 261.143(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".

(c) The incorporation by reference of 40 C.F.R. section 261.147 is amended as follows: in 40 C.F.R. section 261.147(a)(1)(i) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one 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". Replace "a Regional Administrator" with "the director".

(d) 40 C.F.R. sections 261.149 and 261.150 are excluded from the incorporation by reference of 40 C.F.R. part 261.

(e) The incorporation by reference of 40 C.F.R. section 261.151 is amended as follows: replace 40 C.F.R. section 261.151 in its entirety to read: "§261.151 Wording of the instruments.

(a) (1) A trust agreement for a trust fund, as specified in 40 C.F.R. section 261.143(a), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a facility regulated under chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or satisfying the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, shall provide assurance that funds will be available if needed for care of the facility under the incorporated version of subpart G of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of the Department of Health, State of Hawaii.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number (if available), name, address, and the current cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the Fund," for the benefit of the department in the event that the hazardous secondary materials of the grantor no longer meet the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payments from the Fund. The Trustee shall make payments from the Fund as the director shall direct, in writing, to provide for the payment of the costs of the performance of activities required under the incorporated version of subpart G of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, for the facilities covered by this Agreement. The

Trustee shall reimburse the Grantor or other persons as specified by the director from the Fund for expenditures for such activities in such amounts as the beneficiary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested

for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange

for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall

constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or

such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 16. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 15, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 17. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee

may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 18. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 19. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(a)(1), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 261.143(a), as incorporated and amended in this chapter.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 40 C.F.R. section 261.143(b), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation:
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address and amount(s) for each facility guaranteed by this bond:
Total penal sum of bond: $
Surety's bond number:
As used in this instrument:
(a) The term "department" means the Department of Health, State of Hawaii.
(b) The term "director" means the director of the Department of Health, State of Hawaii.
Know All Persons By These Presents, That we, the Principal and Surety(ies) are firmly bound to the Department of Health, State of Hawaii, in the event

that the hazardous secondary materials at the reclamation or intermediate facility listed below no longer meet the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter 342J, Hawaii Revised Statutes, to have a permit or interim status in order to own or operate each facility identified above, or to meet conditions under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and

Whereas said Principal is required to provide financial assurance as a condition of permit or interim status or as a condition of an exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall satisfy all the conditions established for exclusion of hazardous

secondary materials from coverage as solid waste under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by the Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the

Principal, the director, and the EPA Regional Administrator, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(b), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]
Corporate Surety(ies)
[Name and address]
State of incorporation:
Liability limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(c) A letter of credit, as specified in 40 C.F.R. section 261.143(c), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Director of Health
Department of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No.____ in your favor, in the event that the hazardous secondary materials at the covered reclamation or intermediary facility(ies) no longer meet the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $____, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No.__, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342J, Hawaii Revised Statutes."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be

available upon presentation of your sight draft for 120 days after the date of receipt by you, the EPA Regional Administrator, and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(c), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(d) A certificate of insurance, as specified in 40 C.F.R. section 261.143(d), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE

Name and Address of Insurer (herein called the "Insurer"):

Name and Address of Insured (herein called the "Insured"):

Facilities Covered: [List for each facility: The EPA Identification Number (if any issued), name, address, and the amount of insurance for all facilities covered, which must total the face amount shown below.

Face Amount:

Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance so that in accordance with applicable regulations all hazardous secondary materials can be removed from the facility or any unit at the facility and the facility or any unit at the facility can be decontaminated at the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the incorporated version of 40 C.F.R. section 261.143(d), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(d), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:
[Date]

(e) A letter from the chief financial officer, as specified in 40 C.F.R. section 261.143(e), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Fill out the following nine paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of 40 C.F.R. part 261. The current cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. part 261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. part

261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 C.F.R. part 261. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. part 261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144. The current closure cost estimates as required by 40 C.F.R. section 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____ .

7. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ___; or (3)

engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In states where EPA is not administering the financial requirements of subpart H of 40 C.F.R. 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 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: __.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: __.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of the incorporated version of 40 C.F.R. section 261.143(e)(1)(i), as amended, in section 11-261.1-1, Hawaii Administrative Rules, are used. Fill in Alternative II if the criteria of the incorporated version of 40 C.F.R. section 261.143(e)(1)(ii), as

amended, in section 11-261.1-1, Hawaii Administrative Rules, are used.]

Alternative I

1. Sum of current cost estimates [total of all cost estimates shown in the nine paragraphs above] $__

*2. Total liabilities [if any portion of the cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $__

*3. Tangible net worth $____

*4. Net worth $____

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital [line 5 minus line 6] $____

*8. The sum of net income plus depreciation, depletion, and amortization $____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____

12. Is line 7 at least 6 times line 1? (Yes/No) ____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) ____

14. Is line 9 at least 6 times line 1? (Yes/No) ____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) ____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) ____

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) ____

Alternative II

1. Sum of current cost estimates [total of all cost estimates shown in the eight paragraphs above] $____

2. Current bond rating of most recent issuance of this firm and name of rating service ____

3. Date of issuance of bond ____

4. Date of maturity of bond ____

*5. Tangible net worth [if any portion of the cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $____

*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

7. Is line 5 at least $10 million? (Yes/No) ____

8. Is line 5 at least 6 times line 1? (Yes/No) ____

*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) ____

10. Is line 6 at least 6 times line 1? (Yes/No) ____

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(f) A letter from the chief financial officer, as specified in 40 C.F.R. section 261.147(f), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial

responsibility for liability coverage under the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules [insert "and costs assured under the incorporated version of 40 C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules" if applicable] as specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number (if any issued), name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules:____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the

business relationship or a copy of the contract establishing such relationship to this letter.]

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules:____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: __. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee __; or (3) engaged in the following substantial business relationship with the owner or operator __, and receiving the following value in consideration of this guarantee __]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and costs assured under the incorporated version of 40 C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules, or closure or post-closure care costs under the incorporated version of 40 C.F.R. section 264.143 or 264.145, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.143 or 265.145, as amended, in section 11-265.1-1, Hawaii Administrative Rules, fill in the following nine

paragraphs regarding facilities and associated cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number (if any issued), name, address, and current cost estimates.]

1. This firm is the owner or operator of the following facilities for which financial assurance is demonstrated through the financial test specified in subpart H of 40 C.F.R. part 261. The current cost estimates covered by the test are shown for each facility:____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. part 261, the following facilities owned or operated by the guaranteed party. The current cost estimates so guaranteed are shown for each facility:____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee____, or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. part 261, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the following facilities through the use of a test equivalent or substantially equivalent to the financial test specified in subpart H of 40 C.F.R. part 261. The current cost estimates covered by such a test are shown for each facility:____.

4. This firm is the owner or operator of the following hazardous secondary materials management facilities for which financial assurance is not demonstrated either to EPA or a State through the

financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. part 261 or equivalent or substantially equivalent State mechanisms. The current cost estimates not covered by such financial assurance are shown for each facility:____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144. The current closure cost estimates as required by 40 C.F.R. section 144.62 are shown for each facility:____.

6. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

7. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

8. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. 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 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: ____.

9. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 40 C.F.R. section 261.147(f)(1)(i), as incorporated and amended in this chapter, are used. Fill in Alternative II if the criteria of 40 C.F.R. section 261.147(f)(1)(ii), as incorporated and amended in this chapter, are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____.

*2. Current assets $____.

*3. Current liabilities $____.

4. Net working capital (line 2 minus line 3) $____.

*5. Tangible net worth $____.

*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____.

7. Is line 5 at least $10 million? (Yes/No) ____.

8. Is line 4 at least 6 times line 1? (Yes/No) ____.

9. Is line 5 at least 6 times line 1? (Yes/No) ____.

*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.

11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____.

2. Current bond rating of most recent issuance and name of rating service _____.

3. Date of issuance of bond _____.

4. Date of maturity of bond _____.

*5. Tangible net worth $____.

*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____.

7. Is line 5 at least $10 million? (Yes/No) ____.

8. Is line 5 at least 6 times line 1? ____.

9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) __.

10. Is line 6 at least 6 times line 1? ____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and costs assured under 40 C.F.R. section 261.143(e), as incorporated and amended in this chapter, or closure or post-closure care costs under 40 C.F.R. section 264.143, 264.145, 265.143, or 265.145, as incorporated and amended in sections 11-264.1-1 and 11-265.1-1.]

Part B. Facility Care and Liability Coverage

[Fill in Alternative I if the criteria of 40 C.F.R. sections 261.143(e)(1)(i) and 261.147(f)(1)(i), as incorporated and amended in this chapter, are used. Fill in Alternative II if the criteria of 40 C.F.R.

sections 261.143(e)(1)(ii) and 261.147(f)(1)(ii), as incorporated and amended in this chapter, are used.]

Alternative I

1. Sum of current cost estimates (total of all cost estimates listed above) $____

2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____

*4. Total liabilities (if any portion of your cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____

*5. Tangible net worth $____

*6. Net worth $____

*7. Current assets $____

*8. Current liabilities $____

9. Net working capital (line 7 minus line 8) $____

*10. The sum of net income plus depreciation, depletion, and amortization $____

*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____

12. Is line 5 at least $10 million? (Yes/No)

13. Is line 5 at least 6 times line 3? (Yes/No)

14. Is line 9 at least 6 times line 3? (Yes/No)

*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.

16. Is line 11 at least 6 times line 3? (Yes/No)

17. Is line 4 divided by line 6 less than 2.0? (Yes/No)

18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)

19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current cost estimates (total of all cost estimates listed above) $____

2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____

4. Current bond rating of most recent issuance and name of rating service _____

5. Date of issuance of bond _____

6. Date of maturity of bond _____

*7. Tangible net worth (if any portion of the cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____

9. Is line 7 at least $10 million? (Yes/No)

10. Is line 7 at least 6 times line 3? (Yes/No)

*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.

12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(f), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(g) (1) A corporate guarantee, as specified in 40 C.F.R. section 261.143(e), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR FACILITY CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a

subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. sections 264.141(h) and 265.141(h), as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules,"] to the Department of Health, State of Hawaii.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. section 261.143(e), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number (if any issued), name, and address.]

3. "Closure plans" as used below refer to the plans maintained as required by the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees that in the event of a determination by the director of health, State of Hawaii (hereinafter, director), that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under the incorporated version of 40 C.F.R. section 261.4(a)(24), as amended, in section 11-261.1-1, Hawaii Administrative Rules, the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with closure requirements found in chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, as applicable, or establish a trust fund as specified in the incorporated version of 40 C.F.R. section 261.143(a), as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the name of the owner or operator in the amount of the current cost estimate.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the

guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the director and EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate financial assurance as specified in chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure plan, the extension or reduction of the time of performance, or any other modification or alteration of an obligation of the owner or operator pursuant to chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or in the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, or the financial assurance condition of the incorporated version of 40 C.F.R. section 261.4(a)(24)(vi)(F), as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]: Guarantor may terminate this guarantee by sending notice by certified mail to the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director approves, alternate coverage complying with the incorporated version of 40 C.F.R. section 261.143, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator] Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or the incorporated version of subpart H of 40 C.F.R. <u>part</u> 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as

applicable, and obtain written approval of such assurance from the director within 90 days after a notice of cancellation by the guarantor is received from guarantor by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department of Health, State of Hawaii, or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure plan and of amendments or modifications of the applicable requirements of chapter 11-264.1 or 11-265.1, Hawaii Administrative Rules, or the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

I hereby certify that the wording of this guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(g)(1), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(2) A guarantee, as specified in 40 C.F.R. section 261.147(g), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized

under the laws of [if incorporated within the United States insert "the State of ____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii Administrative Rules,"] to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. section 261.147(g), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following facility(ies) covered by this guarantee: [List for each facility: EPA identification number (if any issued), name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii (hereinafter, director), the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate liability coverage as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or

operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the director and EPA Regional Administrator by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, provided that such modification shall become effective only if the director does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules, for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director, the EPA Regional Administrator, the state agency and EPA

Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director approves, alternate liability coverage complying with the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence

arising from operating [Principal's] facility should be paid in the amount of $.

[Signatures]
Principal
(Notary) Date
[Signatures]
Claimant(s)
(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(g)(2), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(h) A hazardous waste facility liability endorsement as required 40 C.F.R. section 261.147, as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 261.147(f), as amended, in section 11-261.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii (hereinafter, director), the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

Attached to and forming part of policy No. __ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(h), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an

excess or surplus lines insurer, in one or more States.
[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(i) A certificate of liability insurance as required in 40 C.F.R. section 261.147, as incorporated and amended in this chapter, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS SECONDARY MATERIAL RECLAMATION/INTERMEDIATE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"), of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, and the financial assurance condition of the incorporated version of 40 C.F.R. section 261.4(a)(24)(vi)(F), as amended, in section 11-261.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number (if any issued), name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The

coverage is provided under policy number, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii (hereinafter, director), the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director, the EPA Regional Administrator,

and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

I hereby certify that the wording of this instrument is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(i), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(j) A letter of credit, as specified in 40 C.F.R. section 261.147(h), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution

Director of Health
Department of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $____, for sudden

accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. ____, and

[insert the following language if the letter of credit is being used without a standby trust fund:

(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] facility should be paid in the amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages

because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]

Grantor

[Signatures]

Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.]

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director of health, State of Hawaii, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

[Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(j), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(k) A surety bond, as specified in 40 C.F.R. section 261.147(i), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number (if any issued), name, and address for each facility guaranteed by this bond: ___

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its(their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Chapter 342J, Hawaii Revised Statutes.

(2) Administrative Rules of the Hawaii State Department of Health, particularly chapters 11-264.1 and 11-265.1, Hawaii Administrative Rules, and the incorporated version of subpart H of 40 C.F.R. part 261, as amended, in section 11-261.1-1, Hawaii Administrative Rules (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert Principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert Principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Principal]. This exclusion applies:

(A) Whether [insert Principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Principal];

(2) Premises that are sold, given away or abandoned by [insert Principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Principal];

(4) Personal property in the care, custody or control of [insert Principal];

(5) That particular part of real property on which [insert Principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert Principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets

are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] facility should be paid in the amount of $[ ].

[Signature]
Principal
[Notary] Date
[Signature(s)]
Claimant(s)
[Notary] Date

or (b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the director of health, State of Hawaii (hereinafter, director) forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, the director, and the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the

date of receipt of the notice of cancellation by the Principal, the director, and the EPA Regional Administrator, as evidenced by the return receipts.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the director, the EPA Regional Administrator, and the state agency and EPA Regional [~~Adminsitrator~~] Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(k), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

PRINCIPAL
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]
CORPORATE SURETY(IES)
[Name and address]
State of incorporation:
Liability Limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $

(l) (1) A trust agreement, as specified in 40 C.F.R. section 261.147(j), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of ____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____[up to $1 million] per occurrence and [up to $2 million] annual aggregate for sudden accidental occurrences and ____ [up to $3 million] per occurrence and ____[up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any

responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility or group of facilities should be paid in the amount of $[ ].

[Signatures]
Grantor
[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and

managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred

upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee

and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in

carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(l), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 40 C.F.R.

section 261.147(j), as incorporated and amended in this chapter.

State of
County of
On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.
[Signature of Notary Public]

(m) (1) A standby trust agreement, as specified in 40 C.F.R. section 261.147(h), as incorporated and amended in this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term Grantor means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term Trustee means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This Agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number (if any issued), name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of ____[up to $1 million] per occurrence and ____[up to $2 million] annual aggregate for sudden accidental occurrences and ____[up to $3 million] per occurrence and ____[up to $6 million] annual aggregate for nonsudden

occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on

behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the Fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] facility should be paid in the amount of $[ ]

[Signature]

Grantor

[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of the incorporated version of 40 C.F.R. section 261.151(k), as amended, in section 11-261.1-1, Hawaii Administrative Rules, and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of

the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions

from the Grantor and/or the department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in the incorporated version of 40 C.F.R. section 261.147, as amended, in section 11-261.1-1, Hawaii Administrative Rules.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this

Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 261.151(m), as amended, in section 11-261.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in 40 C.F.R. section 261.147(h), as incorporated and amended in this chapter.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/ his name thereto by like order.

[Signature of Notary Public]" [Eff 7/17/17; am and comp 9/30/18; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-11 (Reserved).

§11-261.1-12 Amendments to the incorporation of 40 C.F.R. part 261, subpart J. (a) The incorporation by reference of 40 C.F.R. section 261.196 is amended as follows: in the first note to 40 C.F.R. section 261.196, replace "RCRA section 7003(a)" with "section 342J-8, HRS".

(b) The incorporation by reference of 40 C.F.R. section 261.197 is amended as follows: delete "271,". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-13 to 11-261.1-14 (Reserved).

§11-261.1-15 Amendments to the incorporation of 40 C.F.R. part 261, subpart M. (a) The incorporation by reference of 40 C.F.R. section 261.411 is amended as follows: in 40 C.F.R. section 261.411(d)(3), insert "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" before "the National Response Center".

(b) The incorporation by reference of 40 C.F.R. section 261.420 is amended as follows: in 40 C.F.R.

section 261.420(f)(4)(ii), 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 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§§11-261.1-16 to 11-261.1-28 (Reserved).

§11-261.1-29 Amendments to the incorporation of 40 C.F.R. part 261, subpart AA. (a) The incorporation by reference of 40 C.F.R. section 261.1033 is amended as follows:

(1) 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".

(2) 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".

(3) 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 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or".

(b) The incorporation by reference of 40 C.F.R. section 261.1035 is amended as follows: 40 C.F.R. section 261.1035(b)(1) is excluded from incorporation. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-30 Amendments to the incorporation of 40 C.F.R. part 261, subpart BB. The incorporation by reference of 40 C.F.R. section 261.1064 is amended as follows: 40 C.F.R. section 261.1064(b)(2) is excluded from incorporation. [Eff 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-261.1-31 Amendments to the incorporation of 40 C.F.R. part 261, subpart CC. (a) The incorporation by reference of 40 C.F.R. section 261.1083 is amended as follows: in 40 C.F.R. section 261.1083(a)(1) and 261.1083(a)(1)(i), replace "§261.1082(c)(1)" with "§261.1082(c)".

(b) The incorporation by reference of 40 C.F.R. section 261.1084 is amended as follows:

(1) In 40 C.F.R. section 261.1084(j)(2)(i), replace "§261.1082(c)(1)" with "§261.1082(c)".

(2) In 40 C.F.R. section 261.1084(j)(2)(ii), replace "§261.1082(c)(2)" with "§261.1082(c)".

(3) In 40 C.F.R. section 261.1084(j)(2)(iii), replace "§261.1082(c)(4)" with "§261.1082(c)".

(c) The incorporation by reference of 40 C.F.R. section 261.1089 is amended as follows: in 40 C.F.R. section 261.1089(f), replace "§261.1082(c)(1) or (c)(2)(i) through (vi)" with "§261.1082(c)". [Eff 6/25/20; comp] (Auth: HRS §§342J-4,

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

§11-261.1-32 Amendments to the incorporation of 40 C.F.R. part 261 appendices. 40 C.F.R. part 261 appendix IX is excluded from the incorporation by reference of 40 C.F.R. part 261." [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

3. Chapter 11-262.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards Applicable to Generators of Hazardous Waste", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 262.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

§11-262.1-1 Incorporation of 40 C.F.R. part 262
§11-262.1-2 Substitution of state terms and citations for federal terms and citations
§11-262.1-3 Amendments to the incorporation of 40 C.F.R. part 262, subpart A
§11-262.1-4 (Reserved)
§11-262.1-5 Amendments to the incorporation of 40 C.F.R. part 262, subpart C
§11-262.1-6 Amendments to the incorporation of 40 C.F.R. part 262, subpart D
§11-262.1-7 Amendments to the incorporation of 40 C.F.R. part 262, subpart E
§§11-262.1-8 to 11-262.1-9 (Reserved)
§11-262.1-10 Amendments to the incorporation of 40 C.F.R. part 262, subpart H
§11-262.1-11 Amendments to the incorporation of 40 C.F.R. part 262, subpart I
§11-262.1-12 Amendments to the incorporation of 40 C.F.R. part 262, subpart J
§11-262.1-13 Amendments to the incorporation of 40 C.F.R. part 262, subpart K
§11-262.1-14 Amendments to the incorporation of 40

C.F.R. part 262, subpart L
§11-262.1-15 Amendments to the incorporation of 40 C.F.R. part 262, subpart M
§11-262.1-16 Imports of hazardous waste

Historical note: This chapter is based substantially upon chapter 11-262. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-262.1-1 Incorporation of 40 C.F.R. part 262. Title 40, part 262 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-262.1-2 to 11-262.1-15. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 262, 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 AOC", "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 3010 of RCRA" shall be replaced with "section 342J-6.5, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 262, as incorporated and amended in this chapter:

(1) 40 C.F.R. sections 262.25 and 262.32.

(2) 40 C.F.R. part 262, subparts B and H.

(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 262, 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~~] Rules 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 262, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) References to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 262.20(a)(2).

(2) References in the definition "Exporter" in 40 C.F.R. section 262.81.

(3) The reference in 40 C.F.R. section 262.24(g).

(4) References to 40 C.F.R. part 273, 40 C.F.R. part 266, subpart G, and 40 C.F.R. section 261.6(a)(3)(i) in 40 C.F.R. sections 262.83(b)(1)(xi) and 262.84(b)(1)(xi). [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-3 Amendments to the incorporation of 40 C.F.R. part 262, subpart A. (a) The incorporation by reference of 40 C.F.R. section 262.1 is amended as follows: the following definitions are amended as follows:

"Condition of exemption" definition. Delete "subpart K or".

"Independent requirement" definition. Delete "subpart K or".

(b) The incorporation by reference of 40 C.F.R. section 262.10 is amended as follows:

(1) In 40 C.F.R. section 262.10(a)(2), replace "267" with "266".

(2) In 40 C.F.R. section 262.10(f), delete "267,".

(3) In 40 C.F.R. section 262.10(g)(1) and (2), [~~add~~] <u>insert</u> "and sections 342J-7 and

342J-9, HRS" after each instance of "section 3008 of RCRA".

(4) In 40 C.F.R. section 262.10(g)(2), replace "267" with "266".

(5) 40 C.F.R. section 262.10(k) to (l) is excluded from incorporation.

(6) [~~The effective date note to 40 C.F.R. section 262.10 is excluded from incorporation.~~] In 40 C.F.R. section 262.10(n), insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility", replace each instance of "management of hazardous waste pharmaceuticals" with "management of subpart P hazardous wastes", replace "hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste" with "subpart P hazardous waste and non-subpart P hazardous waste", and replace "hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste" with "subpart P hazardous waste and its non-subpart P hazardous waste".

(c) The incorporation by reference of 40 C.F.R. section 262.11 is amended as follows:

(1) In 40 C.F.R. section 262.11(c), delete "If the waste is listed, the person may file a delisting petition under 40 CFR 260.20 and 260.22 to demonstrate to the Administrator that the waste from this particular site or operation is not a hazardous waste."

(2) In 40 C.F.R. section 262.11(d)(1) and (2), replace "approved by the Administrator under 40 CFR 260.21" with "approved by the Administrator under 40 C.F.R. section 260.21 and approved by the director".

(3) In 40 C.F.R. section 262.11(e), delete "267,".

(d) The incorporation by reference of 40 C.F.R. section 262.13 is amended as follows:

(1) In 40 C.F.R. section 262.13(a)(3), delete "for the hazardous waste generated".

(2) In 40 C.F.R. section 262.13(b)(4), replace "more stringent" with "larger".

(3) In 40 C.F.R. section 262.13(c)(6), insert "or" after the semicolon.

(4) 40 C.F.R. section 262.13(c)(7) is excluded from incorporation.

(5) [~~The effective date note to 40 C.F.R. section 262.13 is excluded from incorporation.~~] In 40 C.F.R. section 262.13(c)(9), insert "or electronic nicotine delivery system" after the first instance of "hazardous waste pharmaceutical".

(e) The incorporation by reference of 40 C.F.R. section 262.14 is amended as follows:

(1) In 40 C.F.R. section 262.14(a)(5)(i) and (ii), insert "or subtitle C of RCRA" after "of this chapter".

(2) In 40 C.F.R. section 262.14(a)(5)(iv), replace "a state" with "the State or any state" and insert "or state rules that correspond to 40 C.F.R. part 258" after "of this chapter".

(3) In 40 C.F.R. section 262.14(a)(5)(v), replace "a state" with "the State or any state" and insert "or state rules that correspond to 40 C.F.R. sections 257.5 to 257.30" after "of this chapter".

(4) In 40 C.F.R. section 262.14(a)(5)(vii), replace the second instance of "part 273 of this chapter" with "40 C.F.R. part 273 or state rules that correspond to 40 C.F.R. part 273".

(5) In 40 C.F.R. section 262.14(a)(5)(x), insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility" and replace "non-creditable hazardous waste pharmaceuticals" with "non-creditable subpart P hazardous waste".

[~~(5)~~] (6) In 40 C.F.R. section 262.14(a)(5)(xi), replace "§ 261.4(j) of this chapter" with "40 C.F.R. section 261.4(j) or corresponding regulations of any authorized state".

[~~(6) The effective date note to 40 C.F.R. section 262.14 is excluded from incorporation.~~]

(f) The incorporation by reference of 40 C.F.R. section 262.15 is amended as follows: in 40 C.F.R. section 262.15(a), replace "267" with "266".

(g) The incorporation by reference of 40 C.F.R. section 262.16 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 262.16, replace "267" with "266".

(2) In 40 C.F.R. section 262.16(b), replace "(d) and (e)" with "(c) and (d)".

(3) In 40 C.F.R. section 262.16(b)(2)(iv), insert "The owner or operator must record inspections in an inspection log or summary. The owner <u>or operator</u> 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." at the end of the section.

(4) In 40 C.F.R. section 262.16(b)(9)(ii), replace "or" with "and".

(5) In 40 C.F.R. section 262.16(b)(9)(iv)(C), insert "and 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" at the end of the first sentence.

(6) In 40 C.F.R. section 262.16(d), delete "267,".

(h) The incorporation by reference of 40 C.F.R. section 262.17 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 262.17, replace "267" with "266".

(2) In 40 C.F.R. section 262.17(a)(1)(v), insert "The owner or operator must record inspections in an inspection log or summary. The owner <u>or operator</u> 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." at the end of the section.

(3) In 40 C.F.R. section 262.17(a)(6), replace "complies" with "must comply".

(4) In 40 C.F.R. section 262.17(c) and (d), replace "267" with "266".

(5) In 40 C.F.R. section 262.17(e), delete "267,". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-4 (Reserved.)

§11-262.1-5 Amendments to the incorporation of 40 C.F.R. part 262, subpart C. Reserved for amendments to 40 C.F.R. part 262, subpart C. [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-6 Amendments to the incorporation of 40 C.F.R. part 262, subpart D. (a) The incorporation by reference of 40 C.F.R. section 262.41 is amended as follows: in 40 C.F.R. section 262.41(b), delete "267".

(b) The incorporation by reference of 40 C.F.R. section 262.42 is amended as follows: in 40 C.F.R.

section 262.42(a)(2) and 262.42(b), delete "for the Region in which the generator is located".

(c) The incorporation by reference of 40 C.F.R. section 262.43 is amended as follows: replace "sections 2002(a) and 3002(a)(6) of the Act" with "section 342J-6, HRS". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-7 Amendments to the incorporation of 40 C.F.R. part 262, subpart E. Reserved for amendments to 40 C.F.R. part 262, subpart E. [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§§11-262.1-8 to 11-262.1-9 (Reserved).

§11-262.1-10 Amendments to the incorporation of 40 C.F.R. part 262, subpart H. (a) The incorporation by reference of 40 C.F.R. section 262.83 is amended as follows:

(1) In 40 C.F.R. section 262.83(a)(6)(i) and (ii), replace "the AES filing compliance date" with "December 31, 2017".

(2) In 40 C.F.R. section 262.83(g), replace "one year after the AES filing compliance date" with "December 31, 2018".

(3) In 40 C.F.R. section 262.83(i)(3), [~~add~~] <u>insert</u> "or director" after "the Administrator".

(b) The incorporation by reference of 40 C.F.R. section 262.84 is amended as follows: in 40 C.F.R. section 262.84(h)(4), [~~add~~] <u>insert</u> "or director" after

"the Administrator". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-11 Amendments to the incorporation of 40 C.F.R. part 262, subpart I. Reserved for amendments to 40 C.F.R. part 262, subpart I. [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-12 Amendments to the incorporation of 40 C.F.R. part 262, subpart J. Reserved for amendments to 40 C.F.R. part 262, subpart J. [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-13 Amendments to the incorporation of 40 C.F.R. part 262, subpart K. 40 C.F.R. part 262, subpart K is excluded from the incorporation by reference of 40 C.F.R. part 262. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-14 Amendments to the incorporation of 40 C.F.R. part 262, subpart L. The incorporation by reference of 40 C.F.R. section 262.232 is amended as follows: in 40 C.F.R. section 262.232(a), delete "for

hazardous waste generated". [Eff and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-15 Amendments to the incorporation of 40 C.F.R. part 262, subpart M. (a) The incorporation by reference of 40 C.F.R. section 262.262 is amended as follows: in 40 C.F.R. section 262.262(b), replace "May 30, 2017" with "September 30, 2018".

(b) The incorporation by reference of 40 C.F.R. section 262.265 is amended as follows: in 40 C.F.R. section 262.265(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 and comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

§11-262.1-16 Imports of hazardous waste. (a) In addition to the requirements of 40 C.F.R. section 262.60(a) to 262.60(e), as incorporated and amended in this chapter, any person who imports hazardous 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 hazardous waste from any state into the State must comply with the

requirements of 40 C.F.R. section 262.20, as incorporated and amended in this chapter, and 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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-35)

4. Chapter 11-263.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards Applicable to Transporters of Hazardous Waste", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 263.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

§11-263.1-1 Incorporation of 40 C.F.R. part 263
§11-263.1-2 Substitution of state terms and citations for federal terms and citations
§11-263.1-3 Amendments to the incorporation of 40 C.F.R. part 263, subpart A
§11-263.1-4 Amendments to the incorporation of 40 C.F.R. part 263, subpart B
§11-263.1-5 Amendments to the incorporation of 40 C.F.R. part 263, subpart C

Historical note: This chapter is based substantially upon chapter 11-263. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-263.1-1 Incorporation of 40 C.F.R. part 263. Title 40, part 263 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal

Register, as amended as of July 1, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-263.1-2 to 11-263.1-5. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 263, 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 263, as incorporated and amended in this chapter: 40 C.F.R. section 263.20.

(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 263, 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~~] Rules 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 263, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 263.20(a)(3). [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-3 Amendments to the incorporation of 40 C.F.R. part 263, subpart A. (a) The incorporation by reference of 40 C.F.R. section 263.10 is amended as follows: in the note to 40 C.F.R. section 263.10(a), replace "enforceable by EPA" with "enforceable by EPA and the state department of health".

(b) The incorporation by reference of 40 C.F.R. section 263.12 is amended as follows: in 40 C.F.R. section 263.12(a), delete "267,". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-4 Amendments to the incorporation of 40 C.F.R. part 263, subpart B. The incorporation by reference of 40 C.F.R. section 263.20 is amended as follows:

(1) In 40 C.F.R. section 263.20(b), add a new sentence at the end of the section to read: "Before transporting the hazardous waste, a transporter who receives hazardous waste from a previous transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the previous transporter. The new transporter must return a signed copy to the previous transporter before leaving the site where possession of the waste is transferred."

(2) In 40 C.F.R. section 263.20(g)(4)(ii), replace "the AES filing compliance date" with "December 31, 2017". [Eff 7/17/17; comp 9/30/18; am and comp; 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

§11-263.1-5 Amendments to the incorporation of 40 C.F.R. part 263, subpart C. The incorporation by reference of 40 C.F.R. section 263.30 is amended as follows: in 40 C.F.R. section 263.30(c)(1), [~~add~~] <u>insert</u> "and to the State department of health, 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"

before the semicolon." [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-33, 342J-35)

5. Chapter 11-264.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities", is amended and compiled 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 and citations for federal terms and citations
§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 to 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 7/17/17]

§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, [~~2019,~~] 2020, 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 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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 and citations for federal terms and citations. (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", "Regional Administrator or State Director", 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".

(3) "Section 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-7, 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 of 40 C.F.R. part 264, as incorporated and amended in this chapter:

(1) 40 C.F.R. sections 264.12 and 264.71.

(2) 40 C.F.R. part 264, subpart FF.

(3) 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 in 40 C.F.R.

part 264, 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~~] Rules 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 264, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) The references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 264.70(b).

(2) 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).

(3) References to 40 C.F.R. sections 268.5, 268.6, and 268.42(b). [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (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. (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: "(d) 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),~~] 264.1(g)(11)(iv), delete "and".

(7) In 40 C.F.R. section [~~264.1(g)(11)(iv),~~] 264.1(g)(11)(v), replace the period at the end [~~with "; and".~~] of the subparagraph with a semicolon.

(8) In 40 C.F.R. section 264.1(g)(11), add a subparagraph [~~(v)~~] (vi) to read: [~~"(v)~~] "(vi) Electronic items as described in 40 C.F.R. section [~~273.6,~~] 273.6.1, as incorporated and amended in section [~~11-273.1-1."~~] 11-273.1-1; and".

(9) In 40 C.F.R. section 264.1(g)(11), add a subparagraph (vii) to read: "(vii) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in section 11-273.1-1."

[~~(9)~~] (10) 40 C.F.R. section 264.1(g)(12) is excluded from incorporation.

[~~(10) The effective date note to 40 C.F.R. section 264.1 is excluded from incorporation.~~]

(b) The incorporation by reference of 40 C.F.R. section 264.4 is amended as follows: insert "or

section 342J-8, HRS" after "RCRA". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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: add a new subsection (d) to read: "(d) Any person who imports hazardous waste into the State from a foreign country or from any state must comply with section 11-262.1-16."

(b) The incorporation by reference of 40 C.F.R. section 264.13 is amended as follows:

(1) In 40 C.F.R. section 264.13(b)(3), delete the entire Comment.

(2) In 40 C.F.R. section 264.13(b)(7)(iii), delete "under §260.22 of this chapter".

(c) 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), insert "264.273," after "264.254,".

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

(d) 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 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (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. (a) The incorporation by reference of 40 C.F.R. section 264.52 is amended as follows: in 40 C.F.R. section 264.52(d), replace "names, addresses, and phone numbers (office and home)" with "names and emergency telephone numbers".

(b) 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 7/17/17; comp 9/30/18; am and comp 6/25/20; comp] (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)(4), replace "§ 264.56(j);" with "40 C.F.R. section 264.56(i), as incorporated and amended in this chapter;".

(2) 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,".

(3) 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".

(4) 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".

(5) 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".

(6) 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 "the following" with "each".

(c) The incorporation by reference of 40 C.F.R. section 264.77 is amended as follows: in 40 C.F.R. section 264.77(a), replace "§ 264.56(j);" with "40 C.F.R. section 264.56(i), as incorporated and amended in this chapter;". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (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 Amendments to the incorporation of 40 C.F.R. part 264, subpart G. (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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: 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: 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) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one 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". Replace "a Regional Administrator" with "the director".

(2) In 40 C.F.R. section 264.147(g)(2)(i) and (ii), 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(i)(4), 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: replace 40 C.F.R. section 264.151 in its entirety to read:

"§264.151 Wording of the instruments.

(a) (1) A trust agreement for a trust fund, as specified in 40 C.F.R. section 264.143(a) or 264.145(a), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(a) or 265.145(a), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available when needed for closure and/or post-closure care of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of the Department of Health, State of Hawaii.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current closure and/or post-closure cost estimates, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any

duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Closure and Post-Closure Care. The Trustee shall make payments from the Fund as the director shall direct, in writing, to provide for the payment of the costs of closure and/or post-closure care of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the director from the Fund for closure and post-closure expenditures in such amounts as the director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or

other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that

may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee’s acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust

in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or department, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the director, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(a)(1), as amended, in section

11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 264.143(a) or 264.145(a), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(a) or 265.145(a), as incorporated and amended in section 11-265.1-1.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in 40 C.F.R. section 264.143(b) or 264.145(b), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(b) or 265.145(b), as incorporated and amended in section

11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed:
Effective date:
Principal: [legal name and business address of owner or operator]
Type of Organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
EPA Identification Number, name, address and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: $ _____
Surety's bond number: _____
As used in this instrument:
(a) The term "department" means the Department of Health, State of Hawaii.
(b) The term "director" means the director of the Department of Health, State of Hawaii.
Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the state department of health, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter 342J, Hawaii Revised Statutes, to have a permit or interim status in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit or interim status, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of each facility identified above, fund the standby trust fund in the amount(s) identified above for the facility,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin closure is issued by the director or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by both Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the director that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the EPA Regional Administrator, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(b), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] _____
[Name(s)] _____
[Title(s)] _____
[Corporate seal] _____
Corporate Surety(ies)
[Name and address]
State of incorporation: _____
Liability limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $ _____

(c) A surety bond guaranteeing performance of closure and/or post-closure care, as specified in 40 C.F.R. section 264.143(c) or 264.145(c), as incorporated and amended in this chapter, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: _____
Effective date: _____
Principal: [legal name and business address of owner or operator]
Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____
Surety(ies): [name(s) and business address(es)]
_____
EPA Identification Number, name, address, and closure and/or post-closure amount(s) for each facility guaranteed by this bond [indicate closure and post-closure amounts separately]: _____
Total penal sum of bond: $ _____
Surety's bond number: _____
As used in this instrument:

(a) The term "department" means the Department of Health, State of Hawaii.

(b) The term "director" means the director of the Department of Health, State of Hawaii.

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the Department of Health, State of Hawaii, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under chapter 342J, Hawaii Revised Statutes, to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for closure, or closure and post-closure care, as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

And, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the

post-closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and obtain the director's written approval of such assurance, within 90 days after the date notice of cancellation is received by the Principal, the director, and the EPA Regional Administrator from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the director that the Principal has been found in violation of the closure requirements of the incorporated version of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, for a facility for which this bond guarantees performance of closure, the Surety(ies) shall either perform closure in accordance with the closure plan and other permit requirements or place the closure amount guaranteed for the facility into the standby trust fund as directed by the director.

Upon notification by the director that the Principal has been found in violation of the post-closure requirements of the incorporated version of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, for a facility for which this bond guarantees performance of post-closure care, the Surety(ies) shall either perform post-closure care in accordance with the post-closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the director.

Upon notification by the director that the Principal has failed to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and obtain written approval of such assurance from the director during the 90 days following receipt by the Principal, the director, and the EPA Regional Administrator of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the director.

The surety(ies) hereby waive(s) notification of amendments to closure plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator, to the director, and to the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director, and the Regional Administrator, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the director.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure and/or post-closure amount, provided

that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(c), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]
State of incorporation: _____
Liability limit: $ _____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $ _____

(d) A letter of credit, as specified in 40 C.F.R. section 264.143(d) or 264.145(d), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(c) or 265.145(c), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Director of Health
Department of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. ___ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $___, available upon presentation of

(1) your sight draft, bearing reference to this letter of credit No. ___, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of chapter 342J, Hawaii Revised Statutes."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by you, the EPA Regional Administrator, and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(d), as amended, in section 11-264.1-1, Hawaii

Administrative Rules, as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in 40 C.F.R. section 264.143(e) or 264.145(e), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(d) or 265.145(d), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR CLOSURE OR POST-CLOSURE CARE

Name and Address of Insurer (herein called the "Insurer"):
Name and Address of Insured (herein called the "Insured"):
Facilities Covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]
Face Amount:
Policy Number:
Effective Date:

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of the incorporated version of 40 C.F.R. sections 264.143(e),

264.145(e), 265.143(d), and 265.145(d), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the director of the state department of health, the Insurer agrees to furnish to the directors a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(e), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:
[Date]

(f) A letter from the chief financial officer, as specified in 40 C.F.R. section 264.143(f) or 264.145(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(e) or 265.145(e), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure and/or post-closure costs, as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended,

in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure cost estimates. Identify each cost estimate as to whether it is for closure or post-closure care].

1. This firm is the owner or operator of the following facilities for which financial assurance for closure or post-closure care is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by the test are shown for each facility: ____.

2. This firm guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure or post-closure care of the following facilities owned or operated by the guaranteed party. The current cost estimates for the closure or post-closure care so guaranteed are shown for each facility: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter].

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. 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 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimates covered by such a test are shown for each facility: _____.

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

5. This firm is the owner or operator of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144. The current closure cost estimates as required by 40 C.F.R. section 144.62 are shown for each facility: ____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.143(f)(1)(i) or 264.145(f)(1)(i), as incorporated and amended in this chapter, or of section 40 C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of [~~of~~] 40 C.F.R. section 264.143(f)(1)(ii) or 264.145(f)(1)(ii), as incorporated and amended in this chapter, or of 40 C.F.R. section 265.143(e)(1)(ii) or 265.145(e)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Sum of current closure and post-closure cost estimate [total of all cost estimates shown in the five paragraphs above] $____

*2. Total liabilities [if any portion of the closure or post-closure cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] $____

*3. Tangible net worth $____

*4. Net worth $____

*5. Current assets $____

*6. Current liabilities $____

7. Net working capital [line 5 minus line 6] $____

*8. The sum of net income plus depreciation, depletion, and amortization $____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____

10. Is line 3 at least $10 million? (Yes/No) ____

11. Is line 3 at least 6 times line 1? (Yes/No) ____

12. Is line 7 at least 6 times line 1? (Yes/No) ____

*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) ____

14. Is line 9 at least 6 times line 1? (Yes/No) ____

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) ____

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) ____

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) ____

Alternative II

1. Sum of current closure and post-closure cost estimates [total of all cost estimates shown in the five paragraphs above] $____

2. Current bond rating of most recent issuance of this firm and name of rating service ____

3. Date of issuance of bond ____

4. Date of maturity of bond ____

*5. Tangible net worth [if any portion of the closure and post-closure cost estimates is included in "total

liabilities" on your firm's financial statements, you may add the amount of that portion to this line] $____
*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) $____
7. Is line 5 at least $10 million? (Yes/No) ____
8. Is line 5 at least 6 times line 1? (Yes/No) ____
*9. Are at least 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) ____
10. Is line 6 at least 6 times line 1? (Yes/No) ____
I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.
[Signature]
[Name]
[Title]
[Date]

(g) A letter from the chief financial officer, as specified in 40 C.F.R. section 264.147(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to director].

I am the chief financial officer of [firm's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care" if applicable] as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

[Fill out the following paragraphs regarding facilities and liability coverage. If there are no

facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, and address].

The firm identified above is the owner or operator of the following facilities for which liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences is being demonstrated through the financial test specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules:____

The firm identified above guarantees, through the guarantee specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules, liability coverage for [insert "sudden" or "nonsudden" or "both sudden and nonsudden"] accidental occurrences at the following facilities owned or operated by the following: ____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the owner or operator; (2) owned by the same parent corporation as the parent corporation of the owner or operator, and receiving the following value in consideration of this guarantee ____; or (3) engaged in the following substantial business relationship with the owner or operator ____, and receiving the following value in consideration of this guarantee ____]. [Attach a written description of the business relationship or a copy of the contract establishing such relationship to this letter.]

[If you are using the financial test to demonstrate coverage of both liability and closure and post-closure care, fill in the following five paragraphs regarding facilities and associated closure and post-closure cost estimates. If there are no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA identification number, name, address, and current closure and/or post-closure cost estimates. Identify

each cost estimate as to whether it is for closure or post-closure care.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure or post-closure care or liability coverage is demonstrated through the financial test specified in subpart H of 40 C.F.R. parts 264 and 265. The current closure and/or post-closure cost estimate covered by the test are shown for each facility: ____.

2. The firm identified above guarantees, through the guarantee specified in subpart H of 40 C.F.R. parts 264 and 265, the closure and post-closure care or liability coverage of the following facilities owned or operated by the guaranteed party. The current cost estimates for closure or post-closure care so guaranteed are shown for each facility: ____.

3. In States where EPA is not administering the financial requirements of subpart H of 40 C.F.R. 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 C.F.R. parts 264 and 265. The current closure or post-closure cost estimates covered by such a test are shown for each facility: ____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanisms specified in subpart H of 40 C.F.R. parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility: ____.

5. This firm is the owner or operator or guarantor of the following UIC facilities for which financial assurance for plugging and abandonment is required under 40 C.F.R. part 144 and is assured through a financial test. The current closure cost

estimates as required by 40 C.F.R. section 144.62 are shown for each facility:____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Part A. Liability Coverage for Accidental Occurrences

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.147(f)(1)(i), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of paragraph of 40 C.F.R. section 264.147(f)(1)(ii), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(f)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated $____.
*2. Current assets $____.
*3. Current liabilities $____.
4. Net working capital (line 2 minus line 3) $____.
*5. Tangible net worth $____.
*6. If less than 90% of assets are located in the U.S., give total U.S. assets $____.
7. Is line 5 at least $10 million? (Yes/No) ____.
8. Is line 4 at least 6 times line 1? (Yes/No) ____.
9. Is line 5 at least 6 times line 1? (Yes/No) ____.
*10. Are at least 90% of assets located in the U.S.? (Yes/No) ____. If not, complete line 11.
11. Is line 6 at least 6 times line 1? (Yes/No) ____.

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated $____.
2. Current bond rating of most recent issuance and name of rating service ____ ____.
3. Date of issuance of bond _____.
4. Date of maturity of bond _____.
*5. Tangible net worth $____.
*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____.
7. Is line 5 at least $10 million? (Yes/No) ____.
8. Is line 5 at least 6 times line 1? ____.
9. Are at least 90% of assets located in the U.S.? If not, complete line 10. (Yes/No) ____.
10. Is line 6 at least 6 times line 1? ____.

[Fill in part B if you are using the financial test to demonstrate assurance of both liability coverage and closure or post-closure care.]

Part B. Closure or Post-Closure Care and Liability Coverage

[Fill in Alternative I if the criteria of 40 C.F.R. section 264.143(f)(1)(i) or 264.145(f)(1)(i) and 40 C.F.R. section 264.147(f)(1)(i), as incorporated and amended in this chapter, are used or if the criteria of 40 C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i) and 40 C.F.R. section 265.147(f)(1)(i), as incorporated and amended in section 11-265.1-1, are used. Fill in Alternative II if the criteria of 40 C.F.R. section 264.143(f)(1)(ii) or 264.145(f)(1)(ii) and 40 C.F.R. section 264.147(f)(1)(ii), as incorporated and amended in this chapter, are used or if the criteria of 40 C.F.R. section 265.143(e)(1)(i) or 265.145(e)(1)(i) and 40 C.F.R. section 265.147(f)(1)(ii), as incorporated and amended in section 11-265.1-1, are used.]

Alternative I

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $____
2. Amount of annual aggregate liability coverage to be demonstrated $____

3. Sum of lines 1 and 2 $____
*4. Total liabilities (if any portion of your closure or post-closure cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6) $____
*5. Tangible net worth $____
*6. Net worth $____
*7. Current assets $____
*8. Current liabilities $____
9. Net working capital (line 7 minus line 8) $____
*10. The sum of net income plus depreciation, depletion, and amortization $____
*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.) $____
12. Is line 5 at least $10 million? (Yes/No)
13. Is line 5 at least 6 times line 3? (Yes/No)
14. Is line 9 at least 6 times line 3? (Yes/No)
*15. Are at least 90% of assets located in the U.S.? (Yes/No) If not, complete line 16.
16. Is line 11 at least 6 times line 3? (Yes/No)
17. Is line 4 divided by line 6 less than 2.0? (Yes/No)
18. Is line 10 divided by line 4 greater than 0.1? (Yes/No)
19. Is line 7 divided by line 8 greater than 1.5? (Yes/No)

Alternative II

1. Sum of current closure and post-closure cost estimates (total of all cost estimates listed above) $____
2. Amount of annual aggregate liability coverage to be demonstrated $____
3. Sum of lines 1 and 2 $____
4. Current bond rating of most recent issuance and name of rating service ____ ____
5. Date of issuance of bond _____
6. Date of maturity of bond _____
*7. Tangible net worth (if any portion of the closure or post-closure cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line) $____

*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.) $____
9. Is line 7 at least $10 million? (Yes/No)
10. Is line 7 at least 6 times line 3? (Yes/No)
*11. Are at least 90% of assets located in the U.S.? (Yes/No) If not complete line 12.
12. Is line 8 at least 6 times line 3? (Yes/No)

I hereby certify that the wording of this letter is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(g), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

[Signature]
[Name]
[Title]
[Date]

(h) (1) A corporate guarantee, as specified in 40 C.F.R. section 264.143(f) or 264.145(f), as incorporated and amended in this chapter, or 40 C.F.R. section 265.143(e) or 265.145(e), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE FOR CLOSURE OR POST-CLOSURE CARE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor. This guarantee is made on behalf of the [owner or operator] of [business address], which is [one of the following: "our subsidiary"; "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary"; or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii

Administrative Rules,"] to the Department of Health, State of Hawaii.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. sections 264.143(f), 264.145(f), 265.143(e), and 265.145(e), as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by the incorporated version of subpart G of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules for the closure and post-closure care of facilities as identified above.

4. For value received from [owner or operator], guarantor guarantees to the Department of Health, State of Hawaii that in the event that [owner or operator] fails to perform [insert "closure," "post-closure care" or "closure and post-closure care"] of the above facility(ies) in accordance with the closure or post-closure plans and other permit or interim status requirements whenever required to do so, the guarantor shall do so or establish a trust fund as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] in the amount of the current closure or post-closure cost estimates as specified in the incorporated version of subpart H of 40 C.F.R. parts 264 and 265, as amended, in sections 11-264.1-1 and 11-265.1-1, Hawaii Administrative Rules.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii, the EPA Regional Administrator, to the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

6. The guarantor agrees to notify the director of health, State of Hawaii, and EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of health, State of Hawaii, of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure or post-closure care, he shall establish alternate financial assurance as specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure or post-closure plan, amendment or modification of the permit, the extension or reduction of the time of performance of closure or post-closure, or any other modification

or alteration of an obligation of the owner or operator pursuant to the incorporated version of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules.

9. Guarantor agrees to remain bound under this guarantee for as long as [owner or operator] must comply with the applicable financial assurance requirements of the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules for the above-listed facilities, except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director of health, State of Hawaii, approves, alternate closure and/or post-closure care coverage complying with the incorporated version of 40 C.F.R. sections 264.143, 264.145, 265.143, and/or 265.145, as amended, in section 11-264.1-1 and/or 11-265.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with its owner or operator] Guarantor may terminate this guarantee 120 days following the receipt of notification, through certified mail, by the director, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as

specified in the incorporated version of subpart H of 40 C.F.R. part 264 or 265, as amended, in section 11-264.1-1 or 11-265.1-1, Hawaii Administrative Rules, as applicable, and obtain written approval of such assurance from the director of health, State of Hawaii, within 90 days after a notice of cancellation by the guarantor is received from guarantor by the director, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Hawaii department of health or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(h), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(2) A guarantee, as specified in 40 C.F.R. section 264.147(g), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(g), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

GUARANTEE FOR LIABILITY COVERAGE

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of [if incorporated within the United States insert "the State of ____" and insert name of State; if incorporated outside the United States insert the name of the country in which incorporated, the principal place of business within the United States, and the name and address of the registered agent in the State of the principal place of business], herein referred to as guarantor. This guarantee is made on behalf of [owner or operator] of [business address], which is [one of the following: "our subsidiary;" "a subsidiary of [name and address of common parent corporation], of which guarantor is a subsidiary;" or "an entity with which guarantor has a substantial business relationship, as defined in the incorporated version of 40 C.F.R. section [either 264.141(h) or 265.141(h)], as amended, in section [either 11-264.1-1 or 11-265.1-1], Hawaii Administrative Rules,"] to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee.

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in the incorporated version of 40 C.F.R. section 264.147(g), as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147(g), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

2. [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee: [List for each facility: EPA identification number, name, and address; and if guarantor is incorporated outside the United States list the name and address of the guarantor's registered agent in each State.] This corporate guarantee satisfies RCRA third-party liability requirements for [insert "sudden" or "nonsudden" or

"both sudden and nonsudden"] accidental occurrences in above-named owner or operator facilities for coverage in the amount of [insert dollar amount] for each occurrence and [insert dollar amount] annual aggregate.

3. For value received from [owner or operator], guarantor guarantees to any and all third parties who have sustained or may sustain bodily injury or property damage caused by [sudden and/or nonsudden] accidental occurrences arising from operations of the facility(ies) covered by this guarantee that in the event that [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by [sudden and/or nonsudden] accidental occurrences, arising from the operation of the above-named facilities, or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor will satisfy such judgment(s), award(s) or settlement agreement(s) up to the limits of coverage identified above.

4. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert owner or operator] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator]; or

(2) The spouse, child, parent, brother, or sister of that employee as a consequence of, or

arising from, and in the course of employment by [insert owner or operator]. This exclusion applies:

(A) Whether [insert owner or operator] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert owner or operator];

(2) Premises that are sold, given away or abandoned by [insert owner or operator] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert owner or operator];

(4) Personal property in the care, custody or control of [insert owner or operator];

(5) That particular part of real property on which [insert owner or operator] or any contractors or subcontractors working directly or indirectly on behalf of [insert owner or operator] are performing operations, if the property damage arises out of these operations.

5. Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator] that he intends to provide alternate liability coverage as specified in the incorporated

version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such liability coverage unless [owner or operator] has done so.

6. The guarantor agrees to notify the director of health, State of Hawaii, by certified mail of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the director of health, State of Hawaii, of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor, he shall establish alternate liability coverage as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, in the name of [owner or operator], unless [owner or operator] has done so.

8. Guarantor reserves the right to modify this agreement to take into account amendment or modification of the liability requirements set by the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, provided that such modification shall become effective only if the director of health, State of Hawaii, does not disapprove the modification within 30 days of receipt of notification of the modification.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable requirements of the

incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules, for the above-listed facility(ies), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the owner or operator]:

Guarantor may terminate this guarantee by sending notice by certified mail to the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and to [owner or operator], provided that this guarantee may not be terminated unless and until [the owner or operator] obtains, and the director of Health, State of Hawaii, approves, alternate liability coverage complying with the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, and/or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

[Insert the following language if the guarantor is a firm qualifying as a guarantor due to its "substantial business relationship" with the owner or operator]:

Guarantor may terminate this guarantee 120 days following receipt of notification, through certified mail, by the director of health, State of Hawaii, the EPA Regional Administrator, the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the guarantee are located, and by [the owner or operator].

11. Guarantor hereby expressly waives notice of acceptance of this guarantee by any party.

12. Guarantor agrees that this guarantee is in addition to and does not affect any other

responsibility or liability of the guarantor with respect to the covered facilities.

13. The Guarantor shall satisfy a third-party liability claim only on receipt of one of the following documents:

(a) Certification from the Principal and the third-party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Principal] and [insert name and address of third-party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $.

[Signatures]

Principal

(Notary) Date

[Signatures]

Claimant(s)

(Notary) Date

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

14. In the event of combination of this guarantee with another mechanism to meet liability requirements, this guarantee will be considered [insert "primary" or "excess"] coverage.

I hereby certify that the wording of the guarantee is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(h)(2), as amended, in section 11-265.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below.

Effective date:
[Name of guarantor]
[Authorized signature for guarantor]
[Name of person signing]
[Title of person signing]
Signature of witness or notary:

(i) A hazardous waste facility liability endorsement as required in 40 C.F.R. section 264.147, as incorporated and amended in this chapter, or 40 C.F.R. section 265.147, as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY LIABILITY ENDORSEMENT

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering bodily injury and property damage in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs.

2. The insurance afforded with respect to such occurrences is subject to all of the terms and

conditions of the policy; provided, however, that any provisions of the policy inconsistent with subsections (a) through (e) of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy to which this endorsement is attached.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 264.147(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147(f), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of this endorsement, whether by the Insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

(e) Any other termination of this endorsement will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is

received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

Attached to and forming part of policy No. ___ issued by [name of Insurer], herein called the Insurer, of [address of Insurer] to [name of insured] of [address] this _____ day of _____, 20__. The effective date of said policy is _____ day of _____, 20__.

I hereby certify that the wording of this endorsement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(i), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of Authorized Representative of Insurer]
[Type name]
[Title], Authorized Representative of [name of Insurer]
[Address of Representative]

(j) A certificate of liability insurance as required in 40 C.F.R. section 264.147, as incorporated and amended in this chapter, or 40 C.F.R. section 265.147, as incorporated and amended in section 11-265.1-1, must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

HAZARDOUS WASTE FACILITY CERTIFICATE OF LIABILITY INSURANCE

1. [Name of Insurer], (the "Insurer"), of [address of Insurer] hereby certifies that it has issued liability insurance covering bodily injury and property damage to [name of insured], (the "insured"),

of [address of insured] in connection with the insured's obligation to demonstrate financial responsibility under the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules. The coverage applies at [list EPA Identification Number, name, and address for each facility] for [insert "sudden accidental occurrences," "nonsudden accidental occurrences," or "sudden and nonsudden accidental occurrences"; if coverage is for multiple facilities and the coverage is different for different facilities, indicate which facilities are insured for sudden accidental occurrences, which are insured for nonsudden accidental occurrences, and which are insured for both]. The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's liability], exclusive of legal defense costs. The coverage is provided under policy number ___, issued on [date]. The effective date of said policy is [date].

2. The Insurer further certifies the following with respect to the insurance described in Paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the Insurer of its obligations under the policy.

(b) The Insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated as specified in the incorporated version of 40 C.F.R. section 264.147(f), as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147(f), as amended, in section 11-265.1-1, Hawaii Administrative Rules.

(c) Whenever requested by the director of health, State of Hawaii, the Insurer agrees to furnish to the director a signed duplicate original of the policy and all endorsements.

(d) Cancellation of the insurance, whether by the insurer, the insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the hazardous waste management facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

(e) Any other termination of the insurance will be effective only upon written notice and only after the expiration of thirty (30) days after a copy of such written notice is received by the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional Administrator regulating hazardous waste in all states where facilities covered by the policy are located.

I hereby certify that the wording of this instrument is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(j), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulation was constituted on the date first above written, and that the Insurer is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

[Signature of authorized representative of Insurer]

[Type name]

[Title], Authorized Representative of [name of Insurer]

[Address of Representative]

(k) A letter of credit, as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Name and Address of Issuing Institution
Director of Health
State of Hawaii

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in the favor of ["any and all third-party liability claimants" or insert name of trustee of the standby trust fund], at the request and for the account of [owner or operator's name and address] for third-party liability awards or settlements up to [in words] U.S. dollars $_____ per occurrence and the annual aggregate amount of [in words] U.S. dollars $_____, for sudden accidental occurrences and/or for third-party liability awards or settlements up to the amount of [in words] U.S. dollars $_____ per occurrence, and the annual aggregate amount of [in words] U.S. dollars $_____, for nonsudden accidental occurrences available upon presentation of a sight draft bearing reference to this letter of credit No. _____, and [insert the following language if the letter of credit is being used without a standby trust fund:

(1) a signed certificate reading as follows:

Certificate of Valid Claim

The undersigned, as parties [insert principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operations of [principal's] hazardous waste treatment, storage, or disposal facility should be paid in the

amount of $[ ]. We hereby certify that the claim does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or

subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

[Signatures]
Grantor
[Signatures]
Claimant(s)

or (2) a valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.]

This letter of credit is effective as of [date] and shall expire on [date at least one year later], but such expiration date shall be automatically extended for a period of [at least one year] on [date and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify you, the director of health, State of Hawaii, the EPA Regional Administrator, and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us. [Insert the following language if a standby trust fund is not being used: "In the event that this letter of credit is used in combination with another mechanism for liability coverage, this letter of credit shall be considered [insert "primary" or "excess" coverage]."]

We certify that the wording of this letter of credit is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(k), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date].

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for

Documentary Credits, published and copyrighted by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(l) A surety bond, as specified in 40 C.F.R. section 264.147(i), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(i), as incorporated and amended in section 11-265.1-1, must be worded as follows: except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PAYMENT BOND

Surety Bond No. [Insert number]

Parties [Insert name and address of owner or operator], Principal, incorporated in [Insert State of incorporation] of [Insert city and State of principal place of business] and [Insert name and address of surety company(ies)], Surety Company(ies), of [Insert surety(ies) place of business].

EPA Identification Number, name, and address for each facility guaranteed by this bond: ____

	Sudden accidental occurrences	Nonsudden accidental occurrences
Penal Sum Per Occurrence.	[insert amount]	[insert amount]
Annual Aggregate	[insert amount]	[insert amount]

Purpose: This is an agreement between the Surety(ies) and the Principal under which the Surety(ies), its (their) successors and assignees, agree to be responsible for the payment of claims against the Principal for bodily injury and/or property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities in the sums prescribed herein; subject to the governing provisions and the following conditions.

Governing Provisions:

(1) Chapter 342J, Hawaii Revised Statutes.

(2) Administrative Rules of the Hawaii State Department of Health, particularly the incorporated version of ["40 C.F.R. section 264.147, as amended, in section 11-264.1-1" or "40 C.F.R. section 265.147, as amended, in section 11-265.1-1"], Hawaii Administrative Rules (if applicable).

Conditions:

(1) The Principal is subject to the applicable governing provisions that require the Principal to have and maintain liability coverage for bodily injury and property damage to third parties caused by ["sudden" and/or "nonsudden"] accidental occurrences arising from operations of the facility or group of facilities. Such obligation does not apply to any of the following:

(a) Bodily injury or property damage for which [insert principal] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert principal] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert principal] under a workers' compensation, disability benefits, or unemployment compensation law or similar law.

(c) Bodily injury to:

(1) An employee of [insert principal] arising from, and in the course of, employment by [insert principal]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert principal]. This exclusion applies:

(A) Whether [insert principal] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert principal];

(2) Premises that are sold, given away or abandoned by [insert principal] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert principal];

(4) Personal property in the care, custody or control of [insert principal];

(5) That particular part of real property on which [insert principal] or any contractors or subcontractors working directly or indirectly on behalf of [insert principal] are performing operations, if the property damage arises out of these operations.

(2) This bond assures that the Principal will satisfy valid third party liability claims, as described in condition 1.

(3) If the Principal fails to satisfy a valid third party liability claim, as described above, the Surety(ies) becomes liable on this bond obligation.

(4) The Surety(ies) shall satisfy a third party liability claim only upon the receipt of one of the following documents:

(a) Certification from the Principal and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert name of Principal] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Principal’s] hazardous

waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Principal
[Notary] Date
[Signature(s)]
Claimant(s)
[Notary] Date
or

(b) A valid final court order establishing a judgment against the Principal for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Principal's facility or group of facilities.

(5) In the event of combination of this bond with another mechanism for liability coverage, this bond will be considered [insert "primary" or "excess"] coverage.

(6) The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond. In no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum, provided that the Surety(ies) furnish(es) notice to the director of health, State of Hawaii, forthwith of all claims filed and payments made by the Surety(ies) under this bond.

(7) The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, the director of health, State of Hawaii, and the EPA Regional Administrator, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, the director of health, State of Hawaii, and the EPA Regional Administrator, as evidenced by the return receipts.

(8) The Principal may terminate this bond by sending written notice to the Surety(ies) and to the director of health, State of Hawaii, the EPA Regional Administrator, and the state agency and EPA Regional

Administrator regulating hazardous waste in all states where facilities covered by the bond are located.

(9) The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules and regulations and agree(s) that no such amendment shall in any way alleviate its (their) obligation on this bond.

(10) This bond is effective from [insert date] (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described above.

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(l), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate Seal]

CORPORATE SURETY(IES)

[Name and address]
State of incorporation:
Liability Limit: $
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: $

(m)(1) A trust agreement, as specified in 40 C.F.R. section 264.147(j), as incorporated and amended in

this chapter, or 40 C.F.R. section 265.147(j), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of ____" or "a national bank"], the "trustee."

Whereas, the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a trust to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or

arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned to [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments

necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by making payments from the Fund only upon receipt of one of the following documents;

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signatures]

Grantor

[Signatures]

Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the

interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstance then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common commingled, or collective trust fund created by the Trustee in which the fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 81a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this

Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuations. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the director a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the director shall constitute a conclusively binding assent by the Grantor barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and

duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the director to the Trustee shall be in writing, signed by the director, or the director's designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the department hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the department, except as provided for herein.

Section 15. Notice of Nonpayment. If a payment for bodily injury or property damage is made under Section 4 of this trust, the Trustee shall notify the

Grantor of such payment and the amount(s) thereof within five (5) working days. The Grantor shall, on or before the anniversary date of the establishment of the Fund following such notice, either make payments to the Trustee in amounts sufficient to cause the trust to return to its value immediately prior to the payment of claims under Section 4, or shall provide written proof to the Trustee that other financial assurance for liability coverage has been obtained equaling the amount necessary to return the trust to its value prior to the payment of claims. If the Grantor does not either make payments to the Trustee or provide the Trustee with such proof, the Trustee shall within 10 working days after the anniversary date of the establishment of the Fund provide a written notice of nonpayment to the director.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternate financial assurance as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in

carrying out any directions by the Grantor or the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(m), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a trust fund as specified in 40 C.F.R. section 264.147(j), as incorporated and amended in

this chapter, or 40 C.F.R. section 265.147(j), as incorporated and amended in section 11-265.1-1.

State of
County of
On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
[Signature of Notary Public]

(n)(1) A standby trust agreement, as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

STANDBY TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator] a [name of a State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert, "incorporated in the State of _____" or "a national bank"], the "trustee."

Whereas the Department of Health, State of Hawaii, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility or group of facilities must demonstrate financial responsibility for bodily injury and property damage to third parties

caused by sudden accidental and/or nonsudden accidental occurrences arising from operations of the facility or group of facilities.

Whereas, the Grantor has elected to establish a standby trust into which the proceeds from a letter of credit may be deposited to assure all or part of such financial responsibility for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) The term "department" means the Department of Health, State of Hawaii.

(d) The term "director" means the director of health, State of Hawaii.

Section 2. Identification of Facilities. This agreement pertains to the facilities identified on attached schedule A [on schedule A, for each facility list the EPA Identification Number, name, and address of the facility(ies) and the amount of liability coverage, or portions thereof, if more than one instrument affords combined coverage as demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a standby trust fund, hereafter the "Fund," for the benefit of any and all third parties injured or damaged by [sudden and/or nonsudden] accidental occurrences arising from operation of the facility(ies) covered by this guarantee, in the amounts of _____ [up to $1 million] per occurrence and _____ [up to $2 million] annual

aggregate for sudden accidental occurrences and _____ [up to $3 million] per occurrence and _____ [up to $6 million] annual aggregate for nonsudden occurrences, except that the Fund is not established for the benefit of third parties for the following:

(a) Bodily injury or property damage for which [insert Grantor] is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that [insert Grantor] would be obligated to pay in the absence of the contract or agreement.

(b) Any obligation of [insert Grantor] under a workers' compensation, disability benefits, or unemployment compensation law or any similar law.

(c) Bodily injury to:

(1) An employee of [insert Grantor] arising from, and in the course of, employment by [insert Grantor]; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of, or arising from, and in the course of employment by [insert Grantor]. This exclusion applies:

(A) Whether [insert Grantor] may be liable as an employer or in any other capacity; and

(B) To any obligation to share damages with or repay another person who must pay damages because of the injury to persons identified in paragraphs (1) and (2).

(d) Bodily injury or property damage arising out of the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle or watercraft.

(e) Property damage to:

(1) Any property owned, rented, or occupied by [insert Grantor];

(2) Premises that are sold, given away or abandoned by [insert Grantor] if the property damage arises out of any part of those premises;

(3) Property loaned by [insert Grantor];

(4) Personal property in the care, custody or control of [insert Grantor];

(5) That particular part of real property on which [insert Grantor] or any contractors or subcontractors working directly or indirectly on behalf of [insert Grantor] are performing operations, if the property damage arises out of these operations.

In the event of combination with another mechanism for liability coverage, the fund shall be considered [insert "primary" or "excess"] coverage.

The Fund is established initially as consisting of the proceeds of the letter of credit deposited into the Fund. Such proceeds and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the department.

Section 4. Payment for Bodily Injury or Property Damage. The Trustee shall satisfy a third party liability claim by drawing on the letter of credit described in Schedule B and by making payments from the Fund only upon receipt of one of the following documents:

(a) Certification from the Grantor and the third party claimant(s) that the liability claim should be paid. The certification must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certification of Valid Claim

The undersigned, as parties [insert Grantor] and [insert name and address of third party claimant(s)], hereby certify that the claim of bodily injury and/or property damage caused by a [sudden or nonsudden] accidental occurrence arising from operating [Grantor's] hazardous

waste treatment, storage, or disposal facility should be paid in the amount of $[ ].

[Signature]
Grantor
[Signatures]
Claimant(s)

(b) A valid final court order establishing a judgment against the Grantor for bodily injury or property damage caused by sudden or nonsudden accidental occurrences arising from the operation of the Grantor's facility or group of facilities.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of the proceeds from the letter of credit drawn upon by the Trustee in accordance with the requirements of the incorporated version of 40 C.F.R. section 264.151(k), as amended, in section 11-264.1-1, Hawaii Administrative Rules, and Section 4 of this Agreement.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or a State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements to the Trustee shall be paid from the Fund.

Section 10. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question

arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 11. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 12. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the director and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 13. Instructions to the Trustee. All orders, requests, certifications of valid claims, and instructions to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendments to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on

behalf of the Grantor or the director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or department, except as provided for herein.

Section 14. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the director, or by the Trustee and the director if the Grantor ceases to exist.

Section 15. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the director, or by the Trustee and the director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be paid to the Grantor. The director will agree to termination of the Trust when the owner or operator substitutes alternative financial assurance as specified in the incorporated version of 40 C.F.R. section 264.147, as amended, in section 11-264.1-1, Hawaii Administrative Rules, or the incorporated version of 40 C.F.R. section 265.147, as amended, in section 11-265.1-1, Hawaii Administrative Rules.

Section 16. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor and the director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 17. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Hawaii.

Section 18. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation of the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in the incorporated version of 40 C.F.R. section 264.151(n), as amended, in section 11-264.1-1, Hawaii Administrative Rules, as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgement which must accompany the trust agreement for a standby trust fund as specified in 40 C.F.R. section 264.147(h), as incorporated and amended in this chapter, or 40 C.F.R. section 265.147(h), as incorporated and amended in section 11-265.1-1.

State of
County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the

corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.
[Signature of Notary Public]" [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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. Reserved for amendments to 40 C.F.R. part 264, subpart I. [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (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. 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." [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20;

comp] (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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. section 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 7/17/17; comp 9/30/18; comp 6/25/20; am and comp] (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(b)(3), replace "262.34(a)" with "262.17".

(2) 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".

(3) 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 this chapter" 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 this chapter" 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 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-22 Amendments to the incorporation of 40 C.F.R. part 264, subpart BB. (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(b)(2), replace "262.34(a)" with "262.17".

(2) 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".

(3) 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 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (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. section 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. section 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 40 C.F.R. section 264.1082(c)(4)(ii), insert "and approved by the director" 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 7/17/17; comp 9/30/18; comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-264.1-24 Amendments to the incorporation of 40 C.F.R. part 264, subpart DD. The incorporation by reference of 40 C.F.R. section 264.1100 is amended as follows: in the introductory paragraph, replace "RCRA section 3004(k)" with "40 C.F.R. section 268.2(c), as incorporated and amended in section 11-268.1-1"." [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

6. Chapter 11-265.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities", is amended and compiled 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
§11-265.1-2 Substitution of state terms and citations for federal terms and citations
§11-265.1-3 Amendments to the incorporation of 40 C.F.R. part 265, subpart A
§11-265.1-4 Amendments to the incorporation of 40 C.F.R. part 265, subpart B
§11-265.1-5 (Reserved)
§11-265.1-6 Amendments to the incorporation of 40 C.F.R. part 265, subpart D
§11-265.1-7 Amendments to the incorporation of 40 C.F.R. part 265, subpart E
§11-265.1-8 Amendments to the incorporation of 40 C.F.R. part 265, subpart F
§11-265.1-9 Amendments to the incorporation of 40 C.F.R. part 265, subpart G
§11-265.1-10 Amendments to the incorporation of 40 C.F.R. part 265, subpart H
§11-265.1-11 Amendments to the incorporation of 40

C.F.R. part 265, subpart I
§11-265.1-12 Amendments to the incorporation of 40 C.F.R. part 265, subpart J
§11-265.1-13 Amendments to the incorporation of 40 C.F.R. part 265, subpart K
§§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
§11-265.1-17 Amendments to the incorporation of 40 C.F.R. part 265, subpart O
§§11-265.1-18 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 7/17/17]

§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, [~~2019,~~] 2020, 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 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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 and citations for federal terms and citations. (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", "applicable EPA Regional Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "Regional Administrator", "Regional Administrator or State Director", 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".

(3) "Section 3008 of RCRA" shall be replaced with "42 U.S.C. section 6928 or section 342J-7, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 265, as incorporated and amended in this chapter:

(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).

(3) 40 C.F.R. part 265, subpart FF.

(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 265, 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~~] Rules 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 265, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations:

(1) The references to the July 1, 2004 edition of 40 C.F.R. parts 260 to 265 in 40 C.F.R. section 265.70(b).

(2) 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).

(3) References to 40 C.F.R. sections 268.5, 268.6, and 268.42(b). [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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. (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".

(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)(7), replace "subparts K and L" with "subpart L".

(6) In 40 C.F.R. section 265.1(c)(11)(iii), replace "parts 122 through 124 of this chapter" with "chapter 11-55".

(7) In 40 C.F.R. section [~~265.1(c)(14)(iii),~~] 265.1(c)(14)(iv), delete "and".

(8) In 40 C.F.R. section [~~265.1(c)(14)(iv)~~] 265.1(c)(14)(v), replace the period at the end [~~with "; and".~~] of the subparagraph with a semicolon.

(9) In 40 C.F.R. section 265.1(c)(14), add a subparagraph [~~(v)~~] (vi) to read: [~~"(v)~~] "(vi) Electronic items as described in 40 C.F.R. section [~~273.6,~~] 273.6.1, as incorporated and amended in section [~~11-273.1-1."~~] 11-273.1-1; and".

(10) In 40 C.F.R. section 265.1(c)(14), add a subparagraph (vii) to read: "(vii) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in section 11-273.1-1."

[~~(10)~~] (11) 40 C.F.R. section 265.1(c)(15) is excluded from incorporation.

[~~(11) The effective date note to 40 C.F.R. section 265.1 is excluded from incorporation.~~]

(b) The incorporation by reference of 40 C.F.R. section 265.4 is amended as follows: insert "or section 342J-8, HRS" after "RCRA". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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: add a new subsection (c) to read: "(c) Any person who imports hazardous waste into the State from a foreign country or from any state must comply with section 11-262.1-16."

(c) The incorporation by reference of 40 C.F.R. section 265.13 is amended as follows:

(1) In 40 C.F.R. section 265.13(b)(3), delete the entire Comment.

(2) In 40 C.F.R. section 265.13(b)(7)(iii), delete "under §260.22 of this chapter".

(d) 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 "the owner or operator can demonstrate to the director that" after "unless".

(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 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 265.71 is amended as follows: the comment in 40 C.F.R. section 265.71(c) is excluded from incorporation.

(b) 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)(4), replace "§ 265.56(j);" with "40 C.F.R. section

265.56(i), as incorporated and amended in this chapter;".

(2) 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,".

(3) In 40 C.F.R. section 265.73(b)(9), (10), (11), (12), (13), and (14), delete ", and the certification and demonstration if applicable," and "or §268.8".

(c) The incorporation by reference of 40 C.F.R. section 265.75 is amended as follows: replace "the following" with "each".

(d) The incorporation by reference of 40 C.F.R. section 265.77 is amended as follows: in 40 C.F.R. section 265.77(a), replace "§ 265.56(j);" with "40 C.F.R. section 265.56(i), as incorporated and amended in this chapter;". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 265.113 is amended as follows: 40 C.F.R. section 265.113(e)(7)(v) is excluded from incorporation.

(b) 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. [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (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: 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: 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) and (b)(1)(i), replace ", or Regional Administrators if the facilities are located in more than one Region" with ". If the facilities are located in more than one 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". Replace "a Regional Administrator" with "the director".

(2) In 40 C.F.R. section 265.147(g)(2)(i) and (ii), 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(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 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (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. Reserved for amendments to 40 C.F.R. part 265, subpart I. [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (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. 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." [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§11-265.1-17 Amendments to the incorporation of 40 C.F.R. part 265, subpart O. The incorporation by reference of 40 C.F.R. section 265.340 is amended as follows: replace 40 C.F.R. section 265.340(b)(2) in its entirety to read: "(2) The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of 40 C.F.R. part 63, subpart EEE: 40 C.F.R. section 265.351 (closure), as incorporated and amended in this chapter, and the applicable requirements of 40 C.F.R. part 265, subparts A to H, BB, and CC, as incorporated and amended in this chapter." [Eff 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

§§11-265.1-18 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: "§265.430 Applicability Underground injection of hazardous waste is prohibited in the State of Hawaii." [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 40 C.F.R. part 266, subpart H, as incorporated and amended in section 11-266.1-1" before "; or". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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. (a) 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.

(b) The incorporation by reference of 40 C.F.R. section 265.1060 is amended as follows: in 40 C.F.R. section 265.1060(b)(3), delete "EPA". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 (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 (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 40 C.F.R. section 265.1083(c)(4)(ii), insert "and approved by the director" 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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 265.1100 is amended as follows: in the introductory paragraph, replace "RCRA section 3004(k)" with "40 C.F.R. section 268.2(c), as incorporated and amended in section 11-268.1-1"." [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

7. Chapter 11-266.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 266.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

§11-266.1-1 Incorporation of 40 C.F.R. part 266
§11-266.1-2 Substitution of state terms and citations for federal terms and citations
§§11-266.1-3 to 11-266.1-4 (Reserved)
§11-266.1-5 Amendments to the incorporation of 40 C.F.R. part 266, subpart C
§§11-266.1-6 to 11-266.1-7 (Reserved)
§11-266.1-8 Amendments to the incorporation of 40 C.F.R. part 266, subpart F
§11-266.1-9 Amendments to the incorporation of 40 C.F.R. part 266, subpart G
§11-266.1-10 Amendments to the incorporation of 40 C.F.R. part 266, subpart H
§§11-266.1-11 to 11-266.1-14 (Reserved)
§11-266.1-15 Amendments to the incorporation of 40 C.F.R. part 266, subpart M
§§11-266.1-16 Amendments to the incorporation of 40 C.F.R. part 266, subpart N

11-266.1-17 (Reserved)
§11-266.1-18 Amendments to the incorporation of 40 C.F.R. part 266, subpart P

Historical note: This chapter is based substantially upon chapter 11-266. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-266.1-1 Incorporation of 40 C.F.R. part 266. Title 40, part 266 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-266.1-2 to 11-266.1-18. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 266, as incorporated and amended in this chapter, except as listed in subsection (b):

(1) "Administrator", "appropriate EPA Regional Administrator", "Assistant Administrator", "Assistant Administrator for Solid Waste and Emergency Response", "EPA Administrator", "EPA Regional Administrator", "EPA Regional Administrator for the Region in which the healthcare facility is located", "Regional Administrator", and "State Director" shall be replaced with "director".

(2) "Agency", "applicable EPA regional office", "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 3010 of RCRA" shall be replaced with "section 342J-6.5, HRS".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 266, as incorporated and amended in this chapter:

(1) 40 C.F.R. section 266.100(b)(1).

(2) Appendices to 40 C.F.R. part 266.

(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 266, 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. The Hawaii Administrative [~~Rule~~] Rules 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

[Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-3 to 11-266.1-4 (Reserved).

§11-266.1-5 Amendments to the incorporation of 40 C.F.R. part 266, subpart C. (a) The incorporation by reference of 40 C.F.R. section 266.22 is amended as follows: replace the comma between "264" and "265" with "and" and delete "and 267,".

(b) The incorporation by reference of 40 C.F.R. section 266.23 is amended as follows: in 40 C.F.R. section 266.23(a), delete "subparts A through N of". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-6 to 11-266.1-7 (Reserved).

§11-266.1-8 Amendments to the incorporation of 40 C.F.R. part 266, subpart F. The incorporation by reference of 40 C.F.R. section 266.70 is amended as follows: in 40 C.F.R. section 266.70(d), delete "267,". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp:

HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-9 Amendments to the incorporation of 40 C.F.R. part 266, subpart G. The incorporation by reference of 40 C.F.R. part 266, subpart G is amended by replacing 40 C.F.R. section 266.80 in its entirety to read:

"§266.80 Applicability and requirements.

The rules of this section apply to persons who handle spent lead-acid batteries that are recyclable materials ("spent batteries").

(a) Persons who generate, transport, collect, or store spent batteries that will be reclaimed (other than through regeneration) but do not reclaim them are subject to regulation under chapter 11-273.1. (Note: Batteries that will be regenerated are not a solid waste and thus are not a regulated hazardous waste.)

(b) Owners or operators of facilities that reclaim spent lead-acid batteries on-site (other than through regeneration) are subject to the following requirements:

(1) Chapter 11-261.1;

(2) 40 C.F.R. sections 262.11 and 262.18, as incorporated and amended in section 11-262.1-1;

(3) For permitted facilities, all applicable provisions in 40 C.F.R. part 264, subparts A to L, as incorporated and amended in chapter 11-264.1, except 40 C.F.R. sections 264.13, 264.71, and 264.72;

(4) For interim status facilities, all applicable provisions in 40 C.F.R. part 265, subparts A to L, as incorporated and amended in chapter 11-265.1, except 40 C.F.R. sections 265.13, 265.71, and 265.72; and

(5) All applicable provisions in chapters 11-268.1 to 11-271.1.

(c) Persons who export spent lead-acid batteries for reclamation (including regeneration) in a foreign country are subject to the following requirements:

(1) Chapter 11-261.1; and

(2) 40 C.F.R. sections 262.11 and 262.18 and 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1.

(d) Persons who transport spent lead-acid batteries in the U.S. to export them for reclamation (including regeneration) in a foreign country are subject to the requirements of 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1.

(e) Persons who import spent lead-acid batteries from a foreign country for reclamation (other than through regeneration) and store and/or reclaim these batteries are subject to the following requirements:

(1) Chapter 11-261.1;

(2) 40 C.F.R. sections 262.11 and 262.18 and 40 C.F.R. part 262, subpart H, as incorporated and amended in section 11-262.1-1; and

(3) Applicable provisions of chapter 11-268.1." [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-10 Amendments to the incorporation of 40 C.F.R. part 266, subpart H. (a) The incorporation by reference of 40 C.F.R. section 266.100 is amended as follows: in 40 C.F.R. section 266.100(c)(3), replace "conditionally exempt small quantity generators under §261.5 of this chapter" with "very small quantity generators under 40 C.F.R. section 262.14, as incorporated and amended in section 11-262.1-1".

(b) The incorporation by reference of 40 C.F.R. section 266.101 is amended as follows: in 40 C.F.R.

[~~sections~~] section 266.101(c)(1) and 266.101(c)(2), delete "267".

(c) The incorporation by reference of 40 C.F.R. section 266.103 is amended as follows:

(1) In 40 C.F.R. section 266.103(a)(1)(i), replace "national standards" with "state standards".

(2) In 40 C.F.R. section 266.103(c), replace "on or before August 21, 1992" with "by June 18, 1994".

(d) The incorporation by reference of 40 C.F.R. section 266.108 is amended as follows: in the note in 40 C.F.R. section 266.108(c), replace "small quantity generators under §261.5 of this chapter" with "very small quantity generators under 40 C.F.R. section 262.14, as incorporated and amended in section 11-262.1-1" and replace "for the exemption" with "made under 40 C.F.R. section 262.13, as incorporated and amended in section 11-262.1-1".

(e) The incorporation by reference of 40 C.F.R. section 266.111 is amended as follows:

(1) In 40 C.F.R. section 266.111(e)(1)(ii), replace "within 2 years after August 21, 1991" with "by June 18, 1994".

(2) In 40 section C.F.R. section 266.111(e)(2)(i), replace "August 21, 1992" with "June 18, 1994". [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§§11-266.1-11 to 11-266.1-14 (Reserved).

§11-266.1-15 Amendments to the incorporation of 40 C.F.R. part 266, subpart M. The incorporation by

reference of 40 C.F.R. section 266.202 is amended as follows: in 40 C.F.R. section 266.202(d), replace "RCRA section 1004(27)" with "section 342J-2, HRS" and delete "RCRA" before "corrective action". Replace "sections 3004(u) and (v), and 3008(h)" with "RCRA section 3008(h) and section 342J-36, HRS" and replace "section 7003" with "RCRA section 7003 and section 342J-8, HRS". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-16 Amendments to the incorporation of 40 C.F.R. part 266, subpart N. The incorporation by reference of 40 C.F.R. section 266.255 is amended as follows: in 40 C.F.R. section 266.255(a), replace "40 CFR parts 260 through 271," with "chapters 11-260.1 to 11-270.1,". [Eff] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

§11-266.1-17 (Reserved).

§11-266.1-18 Amendments to the incorporation of 40 C.F.R. part 266, subpart P. [~~40 C.F.R. part 266, subpart P is excluded from the incorporation by reference of 40 C.F.R. part 266.~~"] (a) The incorporation by reference of the title of 40 C.F.R. part 266, subpart P is amended as follows: insert "and Hazardous Waste Electronic Nicotine Delivery Systems" at the end of the title.

(b) The incorporation by reference of 40 C.F.R. section 266.500 is amended as follows:

(1) The following definitions are excluded from incorporation: "Non-hazardous waste pharmaceutical" and "Non-pharmaceutical hazardous waste".

(2) The following definitions are amended as follows:

"Hazardous waste pharmaceutical" definition. Replace the definition in its entirety to read: ""Hazardous waste pharmaceutical" means a pharmaceutical that is a solid waste, as defined in 40 C.F.R. section 261.2, as incorporated and amended in section 11-261.1-1, and a hazardous waste, as defined in 40 C.F.R. section 261.3, as incorporated and amended in section 11-261.1-1."

"Pharmaceutical" definition. Delete "; any electronic nicotine delivery system (e.g., electronic cigarette or vaping pen); or any liquid nicotine (e-liquid) packaged for retail sale for use in electronic nicotine delivery systems (e.g., pre-filled cartridges or vials)" and insert "Pharmaceutical includes an electronic nicotine delivery system that is subject to regulation as a drug, device, or combination product by the U.S. Food and Drug Administration." after "spills of pharmaceuticals.".

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

"Electronic nicotine delivery system" means any electronic device that can be used to aerosolize and deliver nicotine to the person inhaling from the device (e.g., electronic cigarette, electronic pipe, vaping pen) and any liquid nicotine (e-liquid) packaged for retail sale for use in such a device (e.g., pre-filled cartridge, tank, pod, or vial).

"Electronic nicotine delivery system retailer" means any person who distributes

or sells electronic nicotine delivery systems. This definition includes, but is not limited to, retailers who sell products directly to consumers, wholesale distributors, and third-party logistics providers that serve as forward distributors. This definition does not include manufacturers or reverse logistics centers.

"Hazardous waste electronic nicotine delivery system" means an electronic nicotine delivery system that is a solid waste, as defined in 40 C.F.R. section 261.2, as incorporated and amended in section 11-261.1-1, and a hazardous waste, as defined in 40 C.F.R. section 261.3, as incorporated and amended in section 11-261.1-1.

"Household waste electronic nicotine delivery system" means an electronic nicotine delivery system that is a solid waste, as defined in 40 C.F.R. section 261.2, as incorporated and amended in section 11-261.1-1, but is excluded from being a hazardous waste under 40 C.F.R. section 261.4(b)(1), as incorporated and amended in section 11-261.1-1.

"Non-creditable subpart P hazardous waste" means a non-creditable hazardous waste pharmaceutical or a hazardous waste electronic nicotine delivery system.

"Non-subpart P hazardous waste" means a solid waste, as defined in 40 C.F.R. section 261.2, as incorporated and amended in section 11-261.1-1, that is a hazardous waste, as defined in 40 C.F.R. section 261.3, as incorporated and amended in section 11-261.1-1, and is not a pharmaceutical or electronic nicotine delivery system, as defined in this section.

"Subpart P hazardous waste" means a hazardous waste pharmaceutical or a

hazardous waste electronic nicotine delivery system.

(c) The incorporation by reference of 40 C.F.R. section 266.501 is amended as follows:

(1) In 40 C.F.R. section 266.501(a), insert "or electronic nicotine delivery system retailer" after "healthcare facility" and replace "its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste" with "its subpart P hazardous waste and its non-subpart P hazardous waste".

(2) In 40 C.F.R. section 266.501(b), insert "or electronic nicotine delivery system retailer" after "healthcare facility", replace "its hazardous waste pharmaceuticals and its non-pharmaceutical hazardous waste" with "its subpart P hazardous waste and its non-subpart P hazardous waste", and replace "management of its hazardous waste pharmaceuticals" with "management of its subpart P hazardous waste".

(3) In 40 C.F.R. section 266.501(c), insert ", electronic nicotine delivery system retailer," after "healthcare facility" and replace "non-pharmaceutical hazardous waste" with "non-subpart P hazardous waste".

(4) In 40 C.F.R. section 266.501(d), insert "and electronic nicotine delivery system retailers" after "healthcare facilities" and insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(5) In 40 C.F.R. section 266.501(d)(1)(i), replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(6) In 40 C.F.R. section 266.501(f), insert "and electronic nicotine delivery systems" after "Hazardous waste pharmaceuticals", insert ", electronic nicotine delivery system retailers," after "healthcare facilities", insert ", electronic nicotine delivery system manufacturers," after "pharmaceutical

manufacturers", and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(7) In 40 C.F.R. section 266.501(g)(1), insert "and electronic nicotine delivery systems" after "Pharmaceuticals".

(8) In 40 C.F.R. section 266.501(g)(2), replace "Over-the-counter pharmaceuticals, dietary supplements, or homeopathic drugs" with "Nonprescription pharmaceuticals and electronic nicotine delivery systems".

(9) In 40 C.F.R. section 266.501(g)(3) and (4), insert "and electronic nicotine delivery systems" after "Pharmaceuticals" and insert "and hazardous waste electronic nicotine delivery systems" after "hazardous waste pharmaceuticals".

(10) In 40 C.F.R. section 266.501(g)(5), insert "and electronic nicotine delivery systems" after "Pharmaceuticals" and "pharmaceuticals".

(11) In 40 C.F.R. section 266.501(g)(7), insert "and household waste electronic nicotine delivery systems" after "Household waste pharmaceuticals".

(d) The incorporation by reference of 40 C.F.R. section 266.502 is amended as follows:

(1) In the title of 40 C.F.R. section 266.502, insert "and electronic nicotine delivery system retailers" after "healthcare facilities" and replace "non-creditable hazardous waste pharmaceuticals" with "non-creditable subpart P hazardous waste (non-creditable hazardous waste pharmaceuticals and hazardous waste electronic nicotine delivery systems)".

(2) In 40 C.F.R. section 266.502(a), replace "—" with "and electronic nicotine delivery system retailers managing hazardous waste electronic nicotine delivery systems.".

(3) In 40 C.F.R. section 266.502(a)(1), insert "or electronic nicotine delivery system

retailer" after the first, second, and fourth instances of "healthcare facility".

(4) In 40 C.F.R. section 266.502(a)(1)(i) and (ii), insert "or electronic nicotine delivery system retailer" after the first instance of "healthcare facility" and replace "as part of its next Biennial Report, if it is required to submit one; or if not required to submit a Biennial Report," with "or electronic nicotine delivery system retailer".

(5) In 40 C.F.R. section 266.502(a)(1)(iii), insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility".

(6) In 40 C.F.R. section 266.502(a)(2), insert "or electronic nicotine delivery system retailer" after the first and third instances of "healthcare facility".

(7) In 40 C.F.R. section 266.502(a)(2)(i) and (ii), insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(8) In 40 C.F.R. section 266.502(b), replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste", insert "and electronic nicotine delivery system retailers" after "healthcare facilities", and insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(9) In 40 C.F.R. section 266.502(c), insert "and electronic nicotine delivery systems" after "non-creditable pharmaceuticals", insert "or electronic nicotine delivery system retailer" after the first instance of "healthcare facility", insert "or electronic nicotine delivery system" after "non-creditable pharmaceutical", and replace "that pharmaceutical is a hazardous waste pharmaceutical" with "that pharmaceutical or

electronic nicotine delivery system is a hazardous waste".

(10) In 40 C.F.R. section 266.502(d), replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste" and insert "and electronic nicotine delivery system retailers" after "healthcare facilities".

(11) In 40 C.F.R. section 266.502(d)(1) and (2), insert "or electronic nicotine delivery system retailer" after "healthcare facility" and replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(12) In 40 C.F.R. section 266.502(d)(2)(iv), replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(13) In 40 C.F.R. section 266.502(d)(3), insert "or electronic nicotine delivery system retailer" after "healthcare facility" and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(14) In 40 C.F.R. section 266.502(e), replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste", insert "and electronic nicotine delivery system retailers" after "healthcare facilities", and insert "An electronic nicotine delivery system retailer must label or clearly mark each container of hazardous waste electronic nicotine delivery systems with the phrase "Hazardous Waste Electronic Nicotine Delivery Systems."" at the end of the paragraph.

(15) In 40 C.F.R. section 266.502(f), replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste" and insert "and electronic nicotine delivery system retailers" after "healthcare facilities".

(16) In 40 C.F.R. section 266.502(f)(1), insert "or electronic nicotine delivery system retailer" after "healthcare facility" and

replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(17) In 40 C.F.R. section 266.502(f)(2), insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility", replace the first instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste", and replace "hazardous waste pharmaceuticals have" with "subpart P hazardous waste has".

(18) In 40 C.F.R. section 266.502(f)(2)(i) to (iii), replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(19) In 40 C.F.R. section 266.502(g), replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste", replace "are" with "or electronic nicotine delivery system retailer is", insert "or electronic nicotine delivery system retailer" after the second instance of "healthcare facility", replace "it" with "a healthcare facility", and insert "for non-creditable hazardous waste pharmacetuicals" at the end of the section.

(20) In 40 C.F.R. section 266.502(h), insert "and electronic nicotine delivery system retailers" after "healthcare facilities", replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste", and insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility".

(21) In 40 C.F.R. section 266.502(h)(3), insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(22) In 40 C.F.R. section 266.502(i), insert "and electronic nicotine delivery system retailers" after "healthcare facilities" and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(23) In 40 C.F.R. section 266.502(i)(1), insert "and electronic nicotine delivery system retailers" after "healthcare facilities" and "Healthcare facilities" and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(24) In 40 C.F.R. section 266.502(i)(2), insert "and electronic nicotine delivery system retailers" after "healthcare facilities".

(25) In 40 C.F.R. section 266.502(i)(2)(i), insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(26) In 40 C.F.R. section 266.502(i)(2)(i)(A), insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility" and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(27) In 40 C.F.R. section 266.502(i)(2)(i)(A)(1), insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(28) In 40 C.F.R. section 266.502(i)(2)(i)(A)(2), replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(29) In 40 C.F.R. section 266.502(i)(2)(ii)(A), insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility" and replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(30) In 40 C.F.R. section 266.502(i)(2)(ii)(A)(1), insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(31) In 40 C.F.R. section 266.502(i)(2)(ii)(A)(2), replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(32) In 40 C.F.R. section 266.502(i)(3), insert "and electronic nicotine delivery system retailers" after "healthcare facilities" and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(33) In 40 C.F.R. section 266.502(j), insert "and electronic nicotine delivery system retailers" after "healthcare facilities" and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(34) In 40 C.F.R. section 266.502(j)(1), insert "or electronic nicotine delivery system retailer" after "healthcare facility" and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(35) In 40 C.F.R. section 266.502(j)(2), insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(36) In 40 C.F.R. section 266.502(j)(3), insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility", insert "and waste electronic nicotine delivery systems" after "non-hazardous waste pharmaceuticals", and replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(37) In 40 C.F.R. section 266.502(k), replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste", insert "and electronic nicotine delivery system retailers" after "healthcare facilities", and insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(38) In 40 C.F.R. section 266.502(l), replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste" and insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility".

(39) In 40 C.F.R. section 266.502(l)(1), insert "or electronic nicotine delivery system

retailer" after each instance of "healthcare facility", replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste", insert "and electronic nicotine delivery system retailers" after each instance of "healthcare facilities", and insert "or electronic nicotine delivery systems" after "supplies pharmaceuticals".

(40) In 40 C.F.R. section 266.502(l)(2) to (4), replace "hazardous waste pharmaceuticals" with "subpart P hazardous waste".

(e) The incorporation by reference of 40 C.F.R. section 266.504 is amended as follows:

(1) In the title of 40 C.F.R. section 266.504, insert "and electronic nicotine delivery system retailers" after "Healthcare facilities" and replace "hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste" with "subpart P hazardous waste and non-subpart P hazardous waste".

(2) In 40 C.F.R. section 266.504(a), replace "hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste" with "subpart P hazardous waste and non-subpart P hazardous waste".

(3) In 40 C.F.R. section 266.504(b), replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste", insert "or electronic nicotine delivery system retailer" after each instance of "healthcare facility", and replace "non-pharmaceutical" with "non-subpart P".

(4) In 40 C.F.R. section 266.504(b)(1) and (2), insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(5) In 40 C.F.R. section 266.504(c), replace each instance of "hazardous waste pharmaceuticals" with "subpart P hazardous waste" and replace "non-pharmaceutical" with "non-subpart P".

(6) In 40 C.F.R. section 266.504(d), replace "hazardous waste pharmaceuticals and non-pharmaceutical hazardous waste" with "subpart P hazardous waste and non-subpart P hazardous waste".

(f) The incorporation by reference of 40 C.F.R. section 266.505 is amended as follows:

(1) In the title of 40 C.F.R. section 266.505, insert "and hazardous waste electronic nicotine delivery systems" after "pharmaceuticals".

(2) In 40 C.F.R. section 266.505, insert "and electronic nicotine delivery system retailers" after "healthcare facilities", insert "and hazardous waste electronic nicotine delivery systems" after "pharmaceuticals", and insert ", electronic nicotine delivery system retailers," after "Healthcare facilities".

(g) The incorporation by reference of 40 C.F.R. section 266.506 is amended as follows:

(1) In the title of 40 C.F.R. section 266.506, insert "and household waste electronic nicotine delivery systems" after "household waste pharmaceuticals".

(2) In 40 C.F.R. section 266.506(a)(2), insert "and household waste electronic nicotine delivery systems" after "Household waste pharmaceuticals" and "household waste pharmacetuicals".

(3) In 40 C.F.R. section 266.506(b), insert "and hazardous waste electronic nicotine delivery systems" after "hazardous waste pharmaceuticals".

(h) The incorporation by reference of 40 C.F.R. section 266.507 is amended as follows:

(1) In the title of 40 C.F.R. section 266.507, insert "or hazardous waste electronic nicotine delivery systems" after "hazardous waste pharmaceuticals".

(2) In 40 C.F.R. section 266.507(a), insert "Nicotine e-liquid vials packaged for retail

sale in electronic nicotine delivery systems (not to exceed 1 liter) are considered empty and the residues are not regulated as hazardous waste provided the liquid has been removed by pouring out the contents." at the end of the paragraph.

(3) In 40 C.F.R. section 266.507(d), insert "Electronic nicotine delivery systems (including attached or attachable cartridges, pods, or tanks) that are unused, partially used, or fully used must be managed as non-creditable subpart P hazardous waste, except empty vials described in paragraph (a)." at the end of the paragraph.

(i) The incorporation by reference of 40 C.F.R. section 266.508 is amended as follows:

(1) In the title of 40 C.F.R. section 266.508, replace "non-creditable hazardous waste pharmaceuticals" with "non-creditable subpart P hazardous waste (non-creditable hazardous waste pharmaceuticals and hazardous waste electronic nicotine delivery ssytems)" and insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(2) In 40 C.F.R. section 266.508(a), replace each instance of "non-creditable hazardous waste pharmaceuticals" with "non-creditable subpart P hazardous waste" and insert "or electronic nicotine delivery system retailer" after "healthcare facility".

(3) In 40 C.F.R. section 266.508(a)(1)(iii)(A), insert "or electronic nicotine delivery systems" after "pharmaceuticals".

(4) In 40 C.F.R. section 266.508(a)(1)(iii)(B), replace each instance of "Facility's" with "facility's, Electronic nicotine delivery system retailer's,".

(5) In 40 C.F.R. section 266.508(a)(2)(ii), replace "the word "PHARMS"" with "either the code "PHARMS" or the code "PHRM"".

(6) In 40 C.F.R. section 266.508(b) and (c), replace each instance of "non-creditable hazardous waste pharmaceuticals" with "non-creditable subpart P hazardous waste" and insert ", electronic nicotine delivery system retailer," after "healthcare facility"." [Eff 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-34, 342J-34.5, 342J-35)

8. Chapter 11-268.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Land Disposal Restrictions", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 268.1

HAZARDOUS WASTE MANAGEMENT:
LAND DISPOSAL RESTRICTIONS

§11-268.1-1 Incorporation of 40 C.F.R. part 268
§11-268.1-2 Substitution of state terms and citations for federal terms and citations
§11-268.1-3 Amendments to the incorporation of 40 C.F.R. part 268, subpart A
§§11-268.1-4 to 11-268.1-5 (Reserved)
§11-268.1-6 Amendments to the incorporation of 40 C.F.R. part 268, subpart D
§11-268.1-7 Amendments to the incorporation of 40 C.F.R. part 268, subpart E

Historical note: This chapter is based substantially upon chapter 11-268. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-268.1-1 Incorporation of 40 C.F.R. part 268. Title 40, part 268 of the Code of Federal Regulations

(C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-268.1-2 to 11-268.1-7. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-268.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 268, 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 268, as incorporated and amended in this chapter: 40 C.F.R. sections 268.1(e)(3), 268.2(j), 268.7(e), 268.13, and 268.40(b) and the appendices to 40 C.F.R. part 268.

(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 268, 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~~] Rules 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 268, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to 40 C.F.R. sections 268.5, 268.6, 268.42(b), and 268.44. [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-268.1-3 Amendments to the incorporation of 40 C.F.R. part 268, subpart A. (a) The incorporation by reference of 40 C.F.R. section 268.1 is amended as follows:

(1) In 40 C.F.R. section [~~268.1(f)(3),~~] 268.1(f)(4), delete "and".

(2) In 40 C.F.R. section [~~268.1(f)(4),~~] 268.1(f)(5), replace the period at the end [~~with "; and".~~] of the paragraph with a semicolon.

(3) In 40 C.F.R. section 268.1(f), add a new paragraph [~~(5)~~] (6) to read: [~~"(5)~~] "(6) Electronic items as described in 40 C.F.R. section [~~273.6,~~] 273.6.1, as incorporated and amended in section [~~11-273.1-1."~~] 11-273.1-1; and".

(4) In 40 C.F.R. section 268.1(f), add a new paragraph (7) to read: "(7) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in section 11-273.1-1."

(b) The incorporation by reference of 40 C.F.R. section 268.4 is amended as follows: in 40 C.F.R. section 268.4(a)(2)(ii), delete "under §260.22 of this chapter".

(c) 40 C.F.R. sections 268.5 and 268.6 are excluded from the incorporation by reference of 40 C.F.R. part 268.

(d) The incorporation by reference of 40 C.F.R. section 268.7 is amended as follows:

(1) In 40 C.F.R. section 268.7(a)(9)(iii), replace "(D001-D043)" with "(D001-D043, excluding D009)".

(2) In 40 C.F.R. section 268.7(d), replace "EPA Regional Administrator (or his designated representative) or State authorized to implement part 268 requirements" with "director".

(3) In 40 C.F.R. section 268.7(d)(1), replace "EPA Regional hazardous waste division director (or his designated representative) or State authorized to implement part 268 requirements" with "director".

[~~(4) The effective date note to 40 C.F.R. section 268.7 is excluded from incorporation.~~] [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS

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

§§11-268.1-4 to 11-268.1-5 (Reserved).

§11-268.1-6 Amendments to the incorporation of 40 C.F.R. part 268, subpart D. 40 C.F.R. sections 268.42(b) and 268.44 are excluded from the incorporation by reference of 40 C.F.R. part 268. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

§11-268.1-7 Amendments to the incorporation of 40 C.F.R. part 268, subpart E. [~~The effective date note to 40 C.F.R. section 268.50 is excluded from the incorporation by reference of 40 C.F.R. part 268.”~~] The incorporation by reference of 40 C.F.R. section 268.50 is amended as follows: in 40 C.F.R. section 268.50(a)(4), insert “or electronic nicotine delivery system retailer” after each instance of “healthcare facility” and replace “hazardous waste pharmaceuticals” with “subpart P hazardous waste”.” [Eff 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-35)

9. Chapter 11-270.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: The Hazardous Waste Permit Program", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 270.1

HAZARDOUS WASTE MANAGEMENT:
THE HAZARDOUS WASTE PERMIT PROGRAM

§11-270.1-1 Incorporation of 40 C.F.R. part 270
§11-270.1-2 Substitution of state terms and citations for federal terms and citations
§11-270.1-3 Amendments to the incorporation of 40 C.F.R. part 270, subpart A
§11-270.1-4 Amendments to the incorporation of 40 C.F.R. part 270, subpart B
§11-270.1-5 Amendments to the incorporation of 40 C.F.R. part 270, subpart C
§11-270.1-6 Amendments to the incorporation of 40 C.F.R. part 270, subpart D
§11-270.1-7 Amendments to the incorporation of 40 C.F.R. part 270, subpart E
§11-270.1-8 Amendments to the incorporation of 40 C.F.R. part 270, subpart F
§11-270.1-9 Amendments to the incorporation of 40 C.F.R. part 270, subpart G
§11-270.1-10 Amendments to the incorporation of 40 C.F.R. part 270, subpart H
§11-270.1-11 (Reserved)

§11-270.1-12 Amendments to the incorporation of 40 C.F.R. part 270, subpart J

Historical note: This chapter is based substantially upon chapter 11-270. [Eff 6/18/94; am 3/13/99; comp 9/20/99; R 7/17/17]

§11-270.1-1 Incorporation of 40 C.F.R. part 270. Title 40, part 270 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-270.1-2 to 11-270.1-12. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 270, 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", "Environmental Appeals Board", "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 for all 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) "The Act" shall be replaced with "chapter 342J, HRS".

(4) "The Act and regulations" shall be replaced with "chapter 342J, HRS, and chapters 11-260.1 to 11-279.1".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 270, as incorporated and amended in this chapter:

(1) The second instance of EPA in 40 C.F.R. section 270.1(c)(7).

(2) 40 C.F.R. section 270.2 definitions of "Administrator", "Approved program or approved state", "Environmental Protection Agency", "EPA", "Regional Administrator", and "State/EPA agreement".

(3) 40 C.F.R. sections 270.5, 270.6, 270.10(e)(1)(iii), 270.10(e)(3), 270.10(f)(3), 270.11(a)(3), 270.42(k)(2)(i), 270.51(d), 270.72(a)(5), 270.72(b)(5), 270.225, and 270.235.

(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 270, 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~~] Rules 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 270, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: references to 40 C.F.R. sections 268.5 and 268.6. [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-3 Amendments to the incorporation of 40 C.F.R. part 270, subpart A. (a) The incorporation by reference of 40 C.F.R. section 270.1 is amended as follows:

(1) Replace 40 C.F.R. section 270.1(a)(1) in its entirety to read: "(1) These permit regulations establish provisions for the Hazardous Waste Permit Program under chapter 342J, HRS."

(2) Replace 40 C.F.R. section 270.1(a)(2) in its entirety to read: "(2) The regulations in this part cover basic state department of health permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements. These regulations are part of

a regulatory scheme implementing chapter 342J, HRS, set forth in chapters 11-260.1 to 11-279.1."

(3) In 40 C.F.R. section 270.1(a)(3), delete "267,".

(4) In 40 C.F.R section 270.1(b), replace "90 days" with "45 days". Replace both instances of "section 3010" with "section 342J-6.5, HRS". Delete "Treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part." Replace "EPA or a State with interim authorization for Phase II or final authorization under part 271" with "the state department of health". Delete "or with the analogous provisions of a State program which has received interim or final authorization under part 271".

(5) 40 C.F.R. section 270.1(b)(1) and 270.1(b)(2) is excluded from incorporation.

(6) 40 C.F.R. section 270.1(c)(1)(i) is excluded from incorporation. The State of Hawaii prohibits the underground injection of hazardous waste.

(7) In 40 C.F.R. section [~~270.1(c)(2)(viii)(C),~~] 270.1(c)(2)(viii)(D), delete "and".

(8) In 40 C.F.R. section [~~270.1(c)(2)(viii)(D),~~] 270.1(c)(2)(viii)(E), replace the period at the end [~~with "; and".~~] of the subparagraph with a semicolon.

(9) In 40 C.F.R. section 270.1(c)(2)(viii), add a new subparagraph [~~(E)~~] (F) to read: [~~"(E)~~] "(F) Electronic items as described in 40 C.F.R. section [~~273.6,~~] 273.6.1, as incorporated and amended in section [~~11-273.1-1."~~] 11-273.1-1; and".

(10) In 40 C.F.R. section 270.1(c)(2)(viii), add a new subparagraph (G) to read: "(G) Solar panels as described in 40 C.F.R. section

273.6.2, as incorporated and amended in section 11-273.1-1."

[~~(10)~~](11) 40 C.F.R. section 270.1(c)(2)(ix) is excluded from incorporation.

[~~(11)~~](12) In 40 C.F.R. section 270.1(c)(7), replace "EPA or by an authorized State" with "EPA or the state department of health".

[~~(12) The effective date note to 40 C.F.R. section 270.1 is excluded from incorporation.~~]

(b) The incorporation by reference of 40 C.F.R. section 270.2 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 270.2, replace "parts 270, 271, and 124" with "this chapter and chapter 11-271.1".

(2) The definitions "Final authorization", "Interim authorization", "Standardized permit", "State", and "State director" are excluded from incorporation.

(3) The following definitions are amended as follows:

"Application" definition. Replace in its entirety to read: "Application means the current EPA standard national forms for applying for a permit. Application also includes the information required by the director under 40 C.F.R. sections 270.14 to 270.29, as incorporated and amended in this chapter."

"Director" definition. Replace in its entirety to read: "Director means the director of the Hawaii department of health."

"Existing hazardous waste management (HWM) facility or existing facility" definition. Replace "on or before November 19, 1980" with "on or before:

(1) November 19, 1980; or

(2) The effective date of statutory or regulatory changes made under RCRA prior to June 18, 1994 that made the

facility subject to the requirement to have an RCRA permit; or

(3) The effective date of statutory or regulatory changes made under chapter 342J, HRS, after June 18, 1994 that made the facility subject to the requirement to have a permit under section 342J-30(a), HRS".

"Facility or activity" definition. Replace "the RCRA program" with "chapter 342J, HRS, and chapters 11-260.1 to 11-279.1".

"Federal, State and local approvals or permits necessary to begin physical construction" definition. Replace the second instance of "local" with "county".

"Major facility" definition. Replace in its entirety to read: "Major facility means any "facility or activity" classified as such by the Regional Administrator in conjunction with the director."

"New HWM facility" definition. Replace in its entirety to read: "New hazardous waste management (HWM) facility means a hazardous waste management facility which is not included in the definition of an existing hazardous waste management facility."

"Permit" definition. Replace in its entirety to read: "Permit means an authorization, license, or equivalent control document issued by EPA to implement the requirements of 40 C.F.R. parts 124, 270, and 271 or by the State to implement the requirements of chapters 11-270.1 and 11-271.1. Permit includes permit by rule (40 C.F.R. section 270.60) and emergency permit (40 C.F.R. section 270.61). Permit does not include hazardous waste management interim status (40 C.F.R. part 270, subpart G), or any permit which has not yet been the subject of final EPA or department action,

such as a draft permit or a proposed permit."

"Person" definition. Replace in its entirety to read: "Person means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity."

"Remedial Action Plan (RAP)" definition. Replace "RCRA permit" with "state hazardous waste permit or EPA-issued RCRA permit".

(c) 40 C.F.R. section 270.3 is excluded from the incorporation by reference of 40 C.F.R. part 270. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-4 Amendments to the incorporation of 40 C.F.R. part 270, subpart B. (a) The incorporation by reference of 40 C.F.R. section 270.10 is amended as follows:

(1) 40 C.F.R. section 270.10(a)(6) is excluded from incorporation.

(2) In 40 C.F.R. section 270.10(e)(1)(iii), replace "March 24, 1987" with "June 18, 1994".

(3) 40 C.F.R. section 270.10(e)(2) is excluded from incorporation.

(4) In 40 C.F.R. section 270.10(e)(3), insert ", or the director may by compliance order issued under section 342J-7, HRS," after "section 3008 of RCRA".

(5) In 40 C.F.R. section 270.10(e)(4), delete "The State Director may require submission

of part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim or final authorization; if not, the Regional Administrator may require submission of Part B." Replace "this Act" with "chapter 342J, HRS".

(6) In 40 C.F.R. section 270.10(f)(2), replace "The application shall be filed with the Regional Administrator if at the time of application the State in which the new hazardous waste management facility is proposed to be located has not received interim or final authorization for permitting such activity; otherwise it shall be filed with the State Director" with "The application shall be filed with the director".

(7) 40 C.F.R. section 270.10(g)(1)(i) is excluded from incorporation.

(8) Replace 40 C.F.R. section 270.10(g)(1)(ii) in its entirety to read: "(ii) With the director, no later than the effective date of amendments to provisions in chapter 11-261.1 listing or designating wastes as hazardous, if the facility is treating, storing, or disposing of any of those newly listed or designated wastes; or".

(9) Replace 40 C.F.R. section 270.10(g)(1)(iii) in its entirety to read: "(iii) As necessary to comply with provisions of 40 C.F.R. section 270.72, as incorporated and amended in this chapter, for changes during interim status. These revised Part A applications shall be filed with the director."

(10) Replace section 40 C.F.R. section 270.10(h) in its entirety to read: "(h) Reapplying for a permit. If you have an effective permit and you want to reapply for a new one, you must submit a new application at least 180 days before the expiration date of the

effective permit, unless the director allows a later date."

(b) The incorporation by reference of 40 C.F.R. section 270.12 is amended as follows: in 40 C.F.R. section 270.12(a), replace "40 CFR part 2" and "40 CFR part 2 (Public Information)" with "sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 2-71 and chapter 92F, HRS".

(c) The incorporation by reference of 40 C.F.R. section 270.14 is amended as follows:

(1) In 40 C.F.R. section 270.14(a), replace "§§0.14 through 270.29" with "40 C.F.R. sections 270.14 to 270.29, as incorporated and amended in this chapter,".

(2) Replace 40 C.F.R. section 270.14(b)(5) in its entirety to read: "(5) A copy of the general inspection schedule required by 40 C.F.R. section 264.15(b), as incorporated and amended in section 11-264.1-1."

(3) In 40 C.F.R. section 270.14(b)(11)(iv)(C)(2), delete "271,".

(4) 40 C.F.R. section 270.14(b)(18) is excluded from incorporation.

(5) Replace 40 C.F.R. section 270.14(b)(20) in its entirety to read: "(20) Applicants may be required to submit such information as may be necessary to enable the director to carry out his duties under other state laws or applicable federal laws." [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-5 Amendments to the incorporation of 40 C.F.R. part 270, subpart C. (a) The incorporation by reference of 40 C.F.R. section 270.31 is amended as follows: in 40 C.F.R. section 270.31(c), replace

"parts 264, 266 and 267" with "chapters 11-264.1 and 11-266.1".

(b) The incorporation by reference of 40 C.F.R. section 270.32 is amended as follows:

(1) In 40 C.F.R. section 270.32(a), delete ", and for EPA issued permits only, 270.33(b) (alternate schedules of compliance) and 270.3 (considerations under Federal law)".

(2) In 40 C.F.R. section 270.32(b)(2), replace "section 3005 of this act" with "section 342J-5, HRS," and replace "Administrator or State Director" with "director".

(3) In 40 C.F.R. section 270.32(b)(3), replace "Administrator or State Director" with "director".

(4) Replace 40 C.F.R. section 270.32(c) in its entirety to read: "(c) An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. 40 C.F.R. section 124.14, as incorporated and amended in section 11-271.1-1, provides a means for reopening permit proceedings at the discretion of the director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in 40 C.F.R. section 270.41, as incorporated and amended in this chapter." [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-6 Amendments to the incorporation of 40 C.F.R. part 270, subpart D. (a) The incorporation by reference of 40 C.F.R. section 270.40 is amended as follows:

(1) In 40 C.F.R. section 270.40(a), replace "the appropriate Act" with "chapter 342J, HRS, or chapters 11-260.1 to 11-279.1".

(2) In 40 C.F.R. section 270.40(b), delete "or as a routine change with prior approval under 40 CFR 124.213".

(b) The incorporation by reference of 40 C.F.R. section 270.41 is amended as follows:

(1) In 40 C.F.R. section 270.41, delete ", or §270.320 and 40 CFR part 124, subpart G". Replace "part 124 (or procedures of an authorized State program)" with "chapter 11-271.1".

(2) 40 C.F.R. section 270.41(b)(3) is excluded from incorporation.

(c) The incorporation by reference of 40 C.F.R. section 270.42 is amended as follows:

(1) In 40 C.F.R. section 270.42(a)(1)(ii), replace "40 CFR 124.10(c)(viii)" with "40 C.F.R. section 124.10(c)(1)(ix), as incorporated and amended in section 11-271.1-1" and replace "40 CFR 124.10(c)(ix)" with "40 C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1".

(2) In 40 C.F.R. section 270.42(b)(2) and (c)(2) replace "40 CFR 124.10(c)(ix)" with "40 C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1,".

(3) In 40 C.F.R. section 270.42(e)(2)(iii), replace "40 CFR 124.10(c)(ix)" with "40 C.F.R. section 124.10(c)(1)(x), as incorporated and amended in section 11-271.1-1".

(4) In 40 C.F.R. section 270.42(f)(2) and (3), replace "40 CFR 124.19" with "40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1".

(5) In 40 C.F.R. section 270.42, Appendix I, Section A, delete Item 10 in its entirety.

(6) In 40 C.F.R. section 270.42, Appendix I, Section F, Item 1c, delete "or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(7) In 40 C.F.R. section 270.42, Appendix I, Section F, Item 4a, delete ", or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(8) In 40 C.F.R. section 270.42, Appendix I, Section G, Item 1e, delete "or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(9) In 40 C.F.R. section 270.42, Appendix I, Section G, Item 5c, delete "or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(10) In 40 C.F.R. section 270.42, Appendix I, Section J, Item 6c, delete "or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in §268.8(a)(2)(ii)".

(d) The incorporation by reference of 40 C.F.R. section 270.43 is amended as follows: in 40 C.F.R.

section 270.43(b), replace "part 124 or part 22, as appropriate or State procedures" with "chapters 11-1 and 11-271.1". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-7 Amendments to the incorporation of 40 C.F.R. part 270, subpart E. (a) The incorporation by reference of 40 C.F.R. section 270.50 is amended as follows:

(1) In 40 C.F.R. section 270.50(a), replace "10 years" with "five years".

(2) In 40 C.F.R. section 270.50(d), replace "five years" with "three years".

(b) The incorporation by reference of 40 C.F.R. section 270.51 is amended as follows:

(1) Replace the introductory paragraph of 40 C.F.R. section 270.51(a) to read: "(a) The conditions of an expired permit continue in force until the effective date of a new permit (see 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1) if:".

(2) In 40 C.F.R. section 270.51(d), replace "In a State with a hazardous waste program authorized under 40 CFR part 271, if" with "If".

(3) 40 C.F.R. section 270.51(e) is excluded from incorporation. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-8 Amendments to the incorporation of 40 C.F.R. part 270, subpart F. (a) 40 C.F.R.

sections 270.60(b) and 270.64 are excluded from the incorporation by reference of 40 C.F.R. part 270. Hawaii prohibits the underground injection of hazardous waste.

(b) 40 C.F.R. section 270.67 is excluded from the incorporation by reference of 40 C.F.R. part 270. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-9 Amendments to the incorporation of 40 C.F.R. part 270, subpart G. The incorporation by reference of 40 C.F.R. section 270.70 is amended as follows:

(1) In 40 C.F.R. section 270.70(a)(1), [~~add~~] insert "or section 342J-6.5, HRS," after "RCRA".

(2) In 40 C.F.R. section 270.70(b), [~~add~~] insert "against the owner and/or operator of the facility, including, but not limited to, an enforcement action for operation of a facility without a permit or interim status" to the end of the last sentence. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-10 Amendments to the incorporation of 40 C.F.R. part 270, subpart H. (a) The incorporation by reference of 40 C.F.R. section 270.80 is amended as follows: in 40 C.F.R. section 270.80(c), replace "RCRA Permit under RCRA section 3005(c)" with "State hazardous waste permit under section 342J-5, HRS".

(b) The incorporation by reference of 40 C.F.R. section 270.115 is amended as follows: replace "Part 2

(Public Information) of this chapter" with "Applicable provisions of chapter 2-71 and chapter 92F, HRS" and replace "part 2 of this chapter" with "applicable provisions of chapter 2-71 and chapter 92F, HRS".

(c) The incorporation by reference of 40 C.F.R. section 270.140 is amended as follows: in 40 C.F.R. section 270.140(b)(3), replace "issuing Regional Office" with "department".

(d) The incorporation by reference of 40 C.F.R. section 270.145 is amended as follows: in 40 C.F.R. section 270.145(a)(4), replace "local government" with "county government".

(e) The incorporation by reference of 40 C.F.R. section 270.150 is amended as follows:

(1) In 40 C.F.R. section 270.150(e), insert ", chapter 91, HRS, and section 342J-12, HRS" at the end of the sentence.

(2) In 40 C.F.R. section 270.150(f), replace "issuing Regional office" with "department".

(f) The incorporation by reference of 40 C.F.R. section 270.155 is amended as follows: replace 40 C.F.R. section 270.155 in its entirety to read: "§270.155 May the decision to approve or deny my RAP application be administratively appealed?
Appeals of RAPs may be made to the same extent as for final permit decisions under 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1, or a decision to deny 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 this chapter."

(g) The incorporation by reference of 40 C.F.R. section 270.160 is amended as follows: replace 40 C.F.R. section 270.160(b) in its entirety to read: "(b) You or another person has appealed your RAP under 40 C.F.R. section 270.155, as incorporated and amended in this chapter; or".

(h) The incorporation by reference of 40 C.F.R. section 270.175 is amended as follows: in 40 C.F.R. section 270.175(a), insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert

"or reasons listed in section 342J-5, HRS," after "listed in this section".

(i) The incorporation by reference of 40 C.F.R. section 270.180 is amended as follows: in 40 C.F.R. section 270.180(a), insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert "and section 342J-5, HRS," after "through (8)".

(j) The incorporation by reference of 40 C.F.R. section 270.185 is amended as follows: insert "After affording you an opportunity for a hearing in accordance with chapter 91, HRS," at the beginning of the section and insert "and section 342J-5, HRS," after "through (7)".

(k) The incorporation by reference of 40 C.F.R. section 270.190 is amended as follows: replace 40 C.F.R. section 270.190 in its entirety to read: "§270.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed? Appeals of decisions to approve or deny a modification, revocation and reissuance, or termination of a RAP may be made to the same extent as for final permit decisions under 40 C.F.R. section 124.15, as incorporated and amended in section 11-271.1-1, or a decision to deny 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 this chapter."

(l) The incorporation by reference of 40 C.F.R. section 270.195 is amended as follows: replace "10 years" and "ten years" with "five years". Replace "RCRA sections 3004 and 3005" with "sections 342J-5 and 342J-34, HRS". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

§11-270.1-11 (Reserved).

§11-270.1-12 Amendments to the incorporation of 40 C.F.R. part 270, subpart J. 40 C.F.R. part 270, subpart J is excluded from the incorporation by reference of 40 C.F.R. part 270." [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-5, 342J-30, 342J-31, 342J-34, 342J-35)

10. Chapter 11-271.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Permit Procedures", is amended and compiled 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 and citations for federal terms and citations
§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 7/17/17]

§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, [~~2019,~~] 2020, 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 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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 and citations for federal terms and citations. (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, except as listed in subsection (b):

(1) "Agency", "EPA", and "issuing Regional Office" shall be replaced with "state department of health".

(2) "Environmental Appeals Board", and "Regional Administrator" shall be replaced with "director".

(b) The federal terms listed in subsection (a) are not replaced with state terms in the following sections of 40 C.F.R. part 124, as incorporated and amended in this chapter: 40 C.F.R. section 124.10(c)(1)(ii).

(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 124, 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. The Hawaii Administrative [~~Rule~~] Rules 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

[Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (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 (f) is 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:

"§124.2 Definitions.

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), replace each instance of "an EPA-issued permit" with "a permit". 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) is 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. sections 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) is excluded from incorporation.

(4) In 40 C.F.R. section 124.8(b)(4), delete "(for EPA-issued permits)".

(5) 40 C.F.R. section 124.8(b)(8) and (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 of 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 (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 (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. section 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) in its entirety 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 (viii) and 124.10(c)(1)(xi) is excluded from incorporation.

(9) 40 C.F.R. section 124.10(c)(2)(i) is excluded from incorporation.

(10) In 40 C.F.R. section 124.10(c)(2)(ii), replace the period at the end of the sentence with "; and".

(11) 40 C.F.R. section 124.10(c)(3) is excluded from incorporation.

(12) 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))—".

(13) 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".

(14) In 40 C.F.R. section 124.10(d)(1)(iii), delete ", for NPDES or 404 general permits when there is no application".

(15) In 40 C.F.R. section 124.10(d)(1)(vi), replace "For EPA-issued permits, the" with "The".

(16) 40 C.F.R. section 124.10(d)(1)(vii) to (ix) is excluded from incorporation.

(17) In 40 C.F.R. section 124.10(d)(2)(ii), [~~add~~] insert "and" after the semicolon.

(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 heading 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 40 C.F.R. section 124.15(c), as incorporated and amended in this chapter, 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) In 40 C.F.R. section 124.15(b)(1), delete "or".
(4) 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 40 C.F.R. section 124.15(c), as incorporated and amended in this chapter, to request a contested case hearing; or".
(5) Add a new subsection (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) Any 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: "(c) 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 of 40 C.F.R. section 124.18, delete "when EPA is the permitting authority".

(2) 40 C.F.R. section 124.18(b)(5) is excluded from incorporation.

(3) Replace 40 C.F.R. section 124.18(d) in its entirety to read: "(d) 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 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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. section 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. section 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 7/17/17; comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-34, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-34, 342J-35)

11. Chapter 11-273.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for Universal Waste Management", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 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 and citations for federal terms and citations
§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 (Reserved)
§11-273.1-9 Amendments to the incorporation of 40 C.F.R. part 273, subpart G
§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 7/17/17]

§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, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-273.1-2 to 11-273.1-9. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (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 and citations for federal terms and citations. (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~~] Rules 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 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (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),~~] 273.1(a)(4), delete "and".

(2) In 40 C.F.R. section [~~273.1(a)(4),~~] 273.1(a)(5), replace the period at the end [~~with "; and".~~] of the paragraph with a semicolon.

(3) In 40 C.F.R. section 273.1(a), add a paragraph [~~(5)~~] (6) to read: [~~"(5)~~] "(6) Electronic items as described in 40 C.F.R. section [~~273.6,~~] 273.6.1, as incorporated and amended in this [~~chapter."~~] chapter; and".

(4) In 40 C.F.R. section 273.1(a), add a paragraph (7) to read: "(7) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in this chapter."

[~~(4)~~](5) 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. section 273.2 is amended as follows: in section 273.2(a)(2) and (b)(1), replace "40 CFR part 266, subpart G" with "40 C.F.R. section 266.80(b) to (e), as incorporated and amended in section 11-266.1-1".

(c) The incorporation by reference of 40 C.F.R. section 273.3 is amended as follows: in section 273.3(b)(2), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

[~~(b)~~](d) 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,~~] 273.6.1, to read:

[~~"§273.6~~] "§273.6.1 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 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)."

(e) The incorporation by reference of 40 C.F.R. part 273 is amended by adding a new section, 40 C.F.R. section 273.6.2, to read:

"§273.6.2 Applicability—Solar panels.

(a) Solar panels covered under chapter 11-273.1. The requirements of this chapter apply to persons managing solar panels, as described in 40 C.F.R. section 273.9, as incorporated and amended in this chapter, except those listed in paragraphs (b) and (c) of this section.

(b) Solar panels not covered under chapter 11-273.1. The requirements of this chapter do not apply to persons managing the following solar panels:

(1) Solar panels that are not yet wastes under chapter 11-261.1. Paragraph (d) of this section describes when a solar panel becomes a waste. A universal waste handler who claims that a solar panel 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 a solar panel.

(2) Solar panels that were previously identified as wastes under chapter 11-261.1 but are no longer identified as wastes (e.g., a discarded solar panel that is refurbished and is returned to service).

(3) Solar panels 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 solar panel does not exhibit a toxicity characteristic bears the burden of demonstrating that the solar panel is not a hazardous waste.

(4) Solar panels that exhibit any characteristic of a hazardous waste other than the characteristic of toxicity. Such solar panels must be managed as hazardous waste pursuant to chapters 11-260.1 to 11-270.1.

(5) Solar panels that are recycled in a manner constituting disposal, as described in 40 C.F.R. section 261.2(c)(1), as incorporated and amended in chapter 11-261.1. Such solar panels must be managed as hazardous waste pursuant to chapters 11-260.1 to 11-270.1.

(c) Solar panels that are integrated into the structure of an electronic item, as defined in 40 C.F.R. section 273.9, as incorporated and amended in this chapter, shall be managed as an electronic item under this chapter.

(d) Generation of waste solar panels.

(1) A used solar panel becomes a waste on the date it is discarded (i.e., when stored while destined for reclamation).

(2) An unused solar panel becomes a waste on the date the handler decides to discard it."

[~~(c)~~] (f) 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"~~] quantity handler of universal waste" definition. Replace [~~"or lamps" with "lamps, or electronic items".~~] "or aerosol cans," with "aerosol cans, electronic items, or solar panels,".

"Small [~~Quantity Handler of Universal Waste"~~] quantity handler of universal waste" definition. Replace [~~"or lamps" with "lamps,~~

~~or electronic items".~~] "or aerosol cans," with "aerosol cans, electronic items, or solar panels,".

"Universal [~~Waste"~~] 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".~~] Replace "; and" with ";" and replace the period at the end of the definition with "; (6) Electronic items as described in 40 C.F.R. section 273.6.1, as incorporated and amended in this chapter; and (7) Solar panels as described in 40 C.F.R. section 273.6.2, as incorporated and amended in this chapter.".

"Universal [~~Waste Handler"~~] waste hander" definition. [~~Delete both instances of "(a) or (c)".~~] Replace "A person who treats (except under the provisions of § 273.13(a) or (c), or §273.33(a) or (c)), disposes of, or recycles (except under the provisions of § 273.13(e) or § 273.33(e)) universal waste;" with "A person who treats, disposes of, or recycles universal waste (except under the provisions of 40 C.F.R. section 273.13 or 273.33, as incorporated and amended in this chapter);".

(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.

"Photovoltaic cell" means a specialized semiconductor diode designed to convert solar radiation into electrical energy. Photovoltaic cells may be composed of, but are not limited to, monocrystalline silicon, polycrystalline silicon, amorphous silicon, cadmium telluride, copper indium gallium selenide, and gallium indium phosphide/gallium arsenide/gallium, and perovskite. Photovoltaic cells are managed as solar panels.

"Solar panel" or "solar photovoltaic panel" means a device consisting of one or more electrically connected photovoltaic cells that are designed to convert solar radiation into electrical energy. Solar panel includes integrated components that cannot be separated without breaking the solar panel glass. Examples of integrated components include, but are not limited to, protective glass, conductive metal contact, metal framing the photovoltaic cells, housing or pocket holding the photovoltaic cells, and top and back layer. Photovoltaic cells that are not electrically connected are managed as solar panels. Solar panel does not include solar thermal panels that do not contain photovoltaic cells.

"Solar photovoltaic system" means a set of components consisting of one or more solar panels and ancillary components such as, but not limited to, metal frames used to support the solar panels, connectors, junction boxes, batteries, inverters, wires, and cables that are connected to the solar panels. Ancillary components are those components of the system that can be manually separated from the solar panel without breaking the solar panel glass.

"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 7/17/17; am and comp 9/30/18; comp 6/25/20; am and comp] (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 as follows:

(1) In 40 C.F.R section 273.13(a)(3)(i), (c)(2)(iii), (c)(2)(iv), (c)(4)(ii), and (e)(4)(v) replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

[~~(1)~~](2) In 40 C.F.R. section [~~273.13(c)(2)(iii) and (iv), replace "262.34" with "262.15, 262.16, or 262.17".~~] 273.13(e)(4)(vi), replace "or" with "and".

[~~(2)~~](3) Add a subsection [~~(e)~~] (f) to read: [~~"(e)~~] "(f) 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 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."

(4) Add a subsection (g) to read:

"(g) Solar panels. A small quantity handler of universal waste must manage solar panels in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Solar panels shall be stored in a manner that prevents breakage and

release of any constituent of a solar panel to the environment under reasonably foreseeable conditions. A container or other method of storage (e.g., stretch-film wrapped panels on a pallet) used must prevent breakage, leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. Intact solar panels need not be contained to meet this standard.

(2) A small quantity handler of universal waste shall immediately clean up and place in a container any universal waste solar panel 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 solar panel, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

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

(i) Sorting solar panels by type;

(ii) Mixing solar panel types in one container, on one pallet, or in one demarcated storage area;

(iii) Removal of ancillary components that are typically removed for replacement during the normal operation and maintenance of a solar photovoltaic system (e.g., connectors, junction boxes, batteries, inverters). A universal waste handler shall conduct the removal of the ancillary components in the manner that is prescribed in the operating manual

for the solar photovoltaic system, or in a manner that would otherwise reasonably be employed during the normal operation and maintenance of the solar photovoltaic system.

(4) A small quantity handler who generates other solid waste (e.g., batteries, inverters) as a result of the activities listed in paragraph (3) 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.

(ii) If the waste is another type of universal waste (e.g., a battery, an electronic item), it may be alternatively managed under this chapter. The handler is considered the generator of the waste and is subject to applicable requirements of chapter 11-262.1 and this chapter.

(iii) 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)~~] (g) to read: [~~"(f)~~] "(g) 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)."

(3) In 40 C.F.R. section 273.14, add a subsection (h) to read: "(h) Each solar panel, container or pallet containing solar panels, or designated universal waste solar panel storage area demarcated by boundaries, must be labeled or marked clearly with one of the following phrases: "Universal Waste—solar panel(s)", or "Waste solar panel(s)", or "Used solar panel(s)."

(c) The incorporation by reference of 40 C.F.R. section 273.17 is amended as follows: in 40 C.F.R. section 273.17(b), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1". [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (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 as follows:

(1) In 40 C.F.R. section 273.33(a)(3)(i), (c)(2)(iii), (c)(2)(iv), (c)(4)(ii), and (e)(4)(v) replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

[~~(1)~~](2) In 40 C.F.R. section [~~273.33(e)(2)(iii) and (iv), replace "262.34" with "262.15, 262.16, or 262.17".~~] 273.33(e)(4)(vi), replace "or" with "and".

[~~(2)~~](3) Add a subsection [~~(e)~~] (f) to read: [~~"(e)~~] "(f) 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."

(4) Add a subsection (g) to read:

"(g) Solar panels. A large quantity handler of universal waste must manage solar panels in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Solar panels shall be stored in a manner that prevents breakage and release of any constituent of a solar panel to the environment under reasonably foreseeable conditions. A container or other method of storage (e.g., stretch-film wrapped panels on a pallet) used must prevent breakage, leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. Intact solar panels need not be contained to meet this standard.

(2) A large quantity handler of universal waste shall immediately clean up and place in a container any universal waste solar panel 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 solar panel, and shall lack evidence of leakage, spillage, or

damage that could cause leakage under reasonably foreseeable conditions.

(3) A large quantity handler of universal waste may conduct the following activities:

(i) Sorting solar panels by type;

(ii) Mixing solar panel types in one container, on one pallet, or in one demarcated storage area;

(iii) Removal of ancillary components that are typically removed for replacement during the normal operation and maintenance of a solar photovoltaic system (e.g., connectors, junction boxes, batteries, inverters). A universal waste handler shall conduct the removal of the ancillary components in the manner that is prescribed in the operating manual for the solar photovoltaic system, or in a manner that would otherwise reasonably be employed during the normal operation and maintenance of the solar photovoltaic system.

(4) A large quantity handler who generates other solid waste (e.g., batteries, inverters) as a result of the activities listed in paragraph (3) 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.

(ii) If the waste is another type of universal waste (e.g., a battery, an electronic item), it may be

alternatively managed under this chapter. The handler is considered the generator of the waste and is subject to applicable requirements of chapter 11-262.1 and this chapter.

(iii) 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)~~] (g) to read: [~~"(f)~~] "(g) 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)"."

(3) In 40 C.F.R. section 273.34, add a subsection (h) to read: "(h) Each solar panel, container or pallet containing solar panels, or designated universal waste solar panel storage area demarcated by boundaries, must be labeled or marked clearly with one of the following phrases: "Universal Waste—solar panel(s)", or "Waste solar panel(s)", or "Used solar panel(s)"."

(d) The incorporation by reference of 40 C.F.R. section 273.37 is amended as follows: in 40 C.F.R. section 273.37(b), replace "40 CFR parts 260 through 272" with "chapters 11-260.1 to 11-270.1".

[~~(d)~~](e) 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 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (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. (a) The incorporation by reference of 40 C.F.R. section 273.54 is amended as follows: in 40 C.F.R. section 273.54(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 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 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 7/17/17; comp 9/30/18; comp 6/25/20; am and comp] (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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (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 (Reserved).

§11-273.1-9 Amendments to the incorporation of 40 C.F.R. part 273, subpart G. [~~The effective date note to 40 C.F.R. section 273.80 is excluded from the incorporation by reference of 40 C.F.R. part 273.~~] The incorporation by reference of 40 C.F.R. section 273.80 is amended as follows: in 40 C.F.R. section 273.80(d), insert "and hazardous waste electronic nicotine delivery systems" after "pharmaceuticals" and replace "a category" with "categories". [Eff 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

§11-273.1-10 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 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35) (Imp: HRS §§342J-4, 342J-31, 342J-32, 342J-33, 342J-35)

12. Chapter 11-279.1, Hawaii Administrative Rules, entitled "Hazardous Waste Management: Standards for the Management of Used Oil", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 279.1

HAZARDOUS WASTE MANAGEMENT:
STANDARDS FOR THE MANAGEMENT OF USED OIL

§11-279.1-1 Incorporation of 40 C.F.R. part 279
§11-279.1-2 Substitution of state terms and citations for federal terms and citations
§11-279.1-3 Amendments to the incorporation of 40 C.F.R. part 279, subpart A
§11-279.1-4 Amendments to the incorporation of 40 C.F.R. part 279, subpart B
§11-279.1-5 Amendments to the incorporation of 40 C.F.R. part 279, subpart C
§11-279.1-6 Amendments to the incorporation of 40 C.F.R. part 279, subpart D
§11-279.1-7 Amendments to the incorporation of 40 C.F.R. part 279, subpart E
§11-279.1-8 Amendments to the incorporation of 40 C.F.R. part 279, subpart F
§11-279.1-9 Amendments to the incorporation of 40 C.F.R. part 279, subpart G
§11-279.1-10 Amendments to the incorporation of 40 C.F.R. part 279, subpart H
§11-279.1-11 Amendments to the incorporation of 40 C.F.R. part 279, subpart I
§11-279.1-12 Recordkeeping requirement for used oil

generators
§11-279.1-13 Annual reporting requirement for used oil transporters and processors/ re-refiners
§11-279.1-14 Used oil and used oil fuel permitting system

Historical note: This chapter is based substantially upon chapter 11-279. [Eff 3/13/99; R 7/17/17]

§11-279.1-1 Incorporation of 40 C.F.R. part 279. Title 40, part 279 of the Code of Federal Regulations (C.F.R.), published by the Office of the Federal Register, as amended as of July 1, [~~2019,~~] 2020, is made a part of this chapter subject to the substitutions and amendments set forth in sections 11-279.1-2 to 11-279.1-11. [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-2 Substitution of state terms and citations for federal terms and citations. (a) The following federal terms are replaced by the indicated state terms in all provisions of 40 C.F.R. part 279, as incorporated and amended in this chapter:

(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".

(3) "RCRA section 3010" shall be replaced with "section 342J-6.5, HRS".

(b) All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in 40 C.F.R. part 279, 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 (c). The Hawaii Administrative [~~Rule~~] Rules 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

(c) 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 279, as incorporated and amended in this chapter, refer to the federal regulations in the Code of Federal Regulations: the references in 40 C.F.R.

section 279.55(a)(2)(i)(B) and (b)(2)(i)(B). [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-3 Amendments to the incorporation of 40 C.F.R. part 279, subpart A. The incorporation by reference of 40 C.F.R. section 279.1 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.1, replace the comma between "260.10" and "261.1" with the word "and" and delete ", and 280.12".

(2) The following definitions are amended as follows:

"Aboveground tank" definition. Replace "§280.12 of this chapter" with "section 342L-1, HRS".

"Existing tank" definition. Replace "the effective date of the authorized used oil program for the State in which the tank is located" with "November 13, 2001".

"New tank" definition. Replace "the effective date of the authorized used oil program for the State in which the tank is located" with "November 13, 2001".

"Used oil collection center" definition. Delete "is registered/licensed/permitted/recognized by a state/county/municipal government to manage used oil and". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-4 Amendments to the incorporation of 40 C.F.R. part 279, subpart B. (a) The incorporation by reference of 40 C.F.R. section 279.10 is amended as follows:

(1) In 40 C.F.R. section 279.10(a), insert at the end of the paragraph: "For used oil sent for disposal, a hazardous waste determination shall be made in accordance with 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1."

(2) In 40 C.F.R. section 279.10(b)(2), [~~add~~] <u>insert</u> "of 40 C.F.R. part 261, as incorporated and amended in section 11-261.1-1," after "subpart D" and after the second instance of "subpart C".

(3) In 40 C.F.R. section 279.10, add a new subsection (j) to read: "(j) Oily water. Oily water, any water that is contaminated with more than de minimis quantities of used oil, is subject to regulation as used oil under this part."

(b) The incorporation by reference of 40 C.F.R. section 279.12 is amended as follows: in 40 C.F.R. section 279.12(b), delete ", except when such activity takes place in one of the states listed in §279.82(c)". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-5 Amendments to the incorporation of 40 C.F.R. part 279, subpart C. (a) The incorporation by reference of 40 C.F.R. section 279.20 is amended as follows:

(1) In 40 C.F.R. section 279.20(b), replace "(b)(1) through (5)" with "(b)(1) to (6)".

(2) In 40 C.F.R. section 279.20(b)(5), delete ", including the use of used oil as a dust suppressant,".

(3) In 40 C.F.R. section 279.20(b), add a new paragraph (6) to read: "(6) Used oil generators shall also comply with the requirements of section 11-279.1-12."

(b) The incorporation by reference of 40 C.F.R. section 279.22 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.22, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.22(b)(1), delete "and".

(3) In 40 C.F.R. section 279.22(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.22(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.22(d) in its entirety to read: "(d) Response to releases. Upon detection of a release of used oil to the environment, a generator shall perform the following cleanup steps:"

(c) The incorporation by reference of 40 C.F.R. section 279.24 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.24, replace "EPA identification numbers" with "a State permit pursuant to section 11-279.1-14".

(2) In 40 C.F.R. section 279.24(a)(3), replace "is registered, licensed, permitted, or recognized by a state/county/municipal government" with "has obtained a state permit under section 11-279.1-14". [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-6 Amendments to the incorporation of 40 C.F.R. part 279, subpart D. The incorporation by reference of 40 C.F.R. section 279.31 is amended as follows: replace 40 C.F.R. section 279.31(b)(2) in its entirety to read: "(2) Obtain a permit under section 11-279.1-14." [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-7 Amendments to the incorporation of 40 C.F.R. part 279, subpart E. (a) The incorporation by reference of 40 C.F.R. section 279.40 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.40(d), replace "(d)(1) through (5)" with "(d)(1) to (6)".

(2) In 40 C.F.R. section 279.40(d)(4) delete "and".

(3) In 40 C.F.R. section 279.40(d)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.40(d), add a new paragraph (6) to read: "(6) Used oil transporters are also subject to the requirements of sections 11-279.1-13 and 11-279.1-14."

(b) The incorporation by reference of 40 C.F.R. section 279.42 is amended as follows: replace 40 C.F.R. section 279.42(b) in its entirety to read: "(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.43 is amended as follows:

(1) In 40 C.F.R. section 279.43(a)(1) and (2), replace "an EPA identification number" with "a permit under section 11-279.1-14".

(2) In 40 C.F.R. section 279.43(a)(3), replace "an EPA identification number" with "a permit pursuant to chapter 11-60.1 subchapter 4 or 5 that allows the burning of used oil".

(3) In 40 C.F.R. section 279.43(a)(4), [~~add~~] <u>insert</u> "who has obtained a permit pursuant to chapter 11-60.1 subchapter 4 or 5 that allows the burning of used oil" at the end of the sentence.

(4) In 40 C.F.R. section 279.43(c)(3)(i), insert "to 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" after "Give notice".

(5) In 40 C.F.R. section 279.43, add a new subsection (d) to read: "(d) Acceptable materials. Only used oil and used oil fuel shall be accepted during any pickup or delivery. The transporter shall not deliver any oil to any person with the knowledge that the oil will be improperly used or disposed of."

(d) The incorporation by reference of 40 C.F.R. section 279.44 is amended as follows: replace 40 C.F.R. section 279.44(b) in its entirety to read: "(b) The transporter must make this determination by testing the used oil by analytical or field test."

(e) The incorporation by reference of 40 C.F.R. section 279.45 is amended as follows:

(1) In 40 C.F.R. section 279.45, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.45(c)(1), delete "and".

(3) In 40 C.F.R. section 279.45(c)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.45(c), add a new paragraph (3) to read: "(3) Closed."

(5) In 40 C.F.R. section 279.45(h), replace the introductory paragraph in its entirety to read: "(h) Response to releases. Upon detection of a release of used oil to the environment, the owner/operator shall perform the following cleanup steps:" [Eff 7/17/17; am and comp 9/30/18; comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-8 Amendments to the incorporation of 40 C.F.R. part 279, subpart F. (a) The incorporation by reference of 40 C.F.R. section 279.50 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.50(b), replace "(b)(1) through (b)(5)" with "(b)(1) to (6)".

(2) In 40 C.F.R. section 279.50(b)(4), delete "and".

(3) In 40 C.F.R. section 279.50(b)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.50(b), Add a new paragraph (6) to read: "(6) Used oil processors/re-refiners are also subject to the requirements of sections 11-279.1-13 and 11-279.1-14."

(b) The incorporation by reference of 40 C.F.R. section 279.51 is amended as follows: replace 40 C.F.R. section 279.51(b) in its entirety to read: "(b) Mechanics of notification. A used oil processor/re-refiner who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a

completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.52 is amended as follows:

(1) Replace the introductory paragraph of 40 C.F.R. section 279.52(a)(2) in its entirety to read: "(2) Required equipment. All facilities shall be equipped with the following:".

(2) In 40 C.F.R. section 279.52(a)(4)(i) and (ii), delete ", unless such a device is not required in paragraph (a)(2) of this section".

(3) In 40 C.F.R. section 279.52(a)(5), delete ", unless aisle space is not needed for any of these purposes".

(4) Replace the introductory paragraph of 40 C.F.R. section 279.52(b)(6)(iv)(B) in its entirety to read: "(B) He shall immediately notify the National Response Center (using their 24-hour toll free number (800) 424-8802 and 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. The report shall include:".

(5) In 40 C.F.R. section 279.52(b)(6)(viii)(C), replace "Regional Administrator, and appropriate State and local authorities" with "director".

(d) The incorporation by reference of 40 C.F.R. section 279.53 is amended as follows: replace 40 C.F.R. section 279.53(b) in its entirety to read: "(b) The owner or operator must make this determination by testing the used oil by analytical or field test."

(e) The incorporation by reference of 40 C.F.R. section 279.54 is amended as follows:

(1) In 40 C.F.R. section 279.54, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground

storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.54(b)(1), delete "and".

(3) In 40 C.F.R. section 279.54(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.54(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.54(g) in its entirety to read: "(g) Response to releases. Upon detection of a release of used oil to the environment, an owner/operator shall perform the following cleanup steps:".

(6) In 40 C.F.R. section 279.54(h)(1)(i), replace "under this chapter" with "under chapters 11-260.1 to 11-279.1".

(f) The incorporation by reference of 40 C.F.R. section 279.55 is amended as follows:

(1) 40 C.F.R. section 279.55(a)(1) and the introductory paragraph of 40 C.F.R. section 279.55(a)(2) are excluded from incorporation.

(2) In 40 C.F.R. section 279.55(a)(2)(i)(B), insert "and approved by the director" before the semicolon at the end of the sentence.

(3) In 40 C.F.R. section 279.55(a)(2)(iii), replace "; and" with a period.

(4) 40 C.F.R. section 279.55(a)(3) is excluded from incorporation.

(5) 40 C.F.R. section 279.55(b)(1) and the introductory paragraph of 40 C.F.R. section 279.55(b)(2) are excluded from incorporation.

(6) In 40 C.F.R. section 279.55(b)(2)(i)(B), insert "and approved by the director" before the semicolon at the end of the sentence.

(7) In 40 C.F.R. section 279.55(b)(2)(iv), replace "; and" with a period.

(8) 40 C.F.R. section 279.55(b)(3) is excluded from incorporation.

(g) The incorporation by reference of 40 C.F.R. section 279.57 is amended as follows:

(1) In the section heading of 40 C.F.R. section 279.57, delete "and reporting".

(2) In 40 C.F.R. section 279.57(a)(2)(i), delete "and" after the semicolon.

(3) In 40 C.F.R. section 279.57(a)(2)(ii), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.57(a)(2), add a new [~~subparagragh~~] subparagraph (iii) to read: "(iii) Records of the equipment testing and maintenance required by 40 C.F.R. section 279.52(a)(3), as incorporated and amended in this chapter."

(5) 40 C.F.R. section 279.57(b) is excluded from incorporation.

(h) The incorporation by reference of 40 C.F.R. section 279.58 is amended as follows: replace "an EPA identification number" with "a State permit pursuant to section 11-279.1-14". [Eff 7/17/17; am and comp 9/30/18; am and comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-9 Amendments to the incorporation of 40 C.F.R. part 279, subpart G. (a) The incorporation by reference of 40 C.F.R. section 279.60 is amended as follows:

(1) In 40 C.F.R. section 279.60(b)(4), delete "and".

(2) In 40 C.F.R. section 279.60(b)(5), delete ", including the use of used oil as a dust suppressant," and replace the period at the end with "; and".

(3) In 40 C.F.R. section 279.60(b), add a new paragraph (6) to read: "(6) Used oil burners are also subject to the clean air requirements of chapter 11-60.1."

(b) The incorporation by reference of 40 C.F.R. section 279.62 is amended as follows: replace 40 C.F.R. section 279.62(b) in its entirety to read: "(b) Mechanics of notification. A used oil burner who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226."

(c) The incorporation by reference of 40 C.F.R. section 279.63 is amended as follows:

(1) Replace 40 C.F.R. section 279.63(b)(1) in its entirety to read: "(1) Testing the used oil by analytical or field test; or".

(2) 40 C.F.R. section 279.63(b)(2) is excluded from incorporation.

(3) In 40 C.F.R. section 279.63(b)(3), replace "information" with "test results".

(d) The incorporation by reference of 40 C.F.R. section 279.64 is amended as follows:

(1) In the introductory paragraph of 40 C.F.R. section 279.64, replace "the Underground Storage Tank (40 CFR part 280) standards" with "the State's underground storage tank standards and any applicable federal standards".

(2) In 40 C.F.R. section 279.64(b)(1), delete "and".

(3) In 40 C.F.R. section 279.64(b)(2), replace the period at the end with "; and".

(4) In 40 C.F.R. section 279.64(b), add a new paragraph (3) to read: "(3) Closed."

(5) Replace the introductory paragraph of 40 C.F.R. section 279.64(g) in its entirety to read: "(g) Response to releases. Upon the detection of a release of used oil to the environment, a burner shall perform the following cleanup steps:". [Eff 7/17/17; comp 9/30/18; comp 6/25/20; am and comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-10 Amendments to the incorporation of 40 C.F.R. part 279, subpart H. (a) The incorporation by reference of 40 C.F.R. section 279.72 is amended as follows:

(1) In 40 C.F.R. section 279.72(a), delete "or other information".

(2) In 40 C.F.R. section 279.72(b), delete "(or other information used to make the determination)".

(b) The incorporation by reference of 40 C.F.R. section 279.73 is amended as follows: replace 40 C.F.R. section 279.73(b) in its entirety to read: "(b) A marketer who has not received an EPA identification number may obtain one by notifying the department of their used oil activity by submitting a completed EPA Form 8700-12. To obtain EPA Form 8700-12, call the department at (808) 586-4226." [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-11 Amendments to the incorporation of 40 C.F.R. part 279, subpart I. (a) The incorporation by reference of 40 C.F.R. section 279.80 is amended as follows: add a second sentence to read: "For used oil sent for disposal, a hazardous waste determination shall be made in accordance with 40 C.F.R. section 262.11, as incorporated and amended in section 11-262.1-1."

(b) The incorporation by reference of 40 C.F.R. section 279.81 is amended as follows: in 40 C.F.R. section 279.81(b), replace "parts 257 and 258 of this chapter" with "40 C.F.R. part 257 and chapter 11-58.1".

(c) The incorporation by reference of 40 C.F.R. section 279.82 is amended as follows: replace 40 C.F.R. section 279.82 in its entirety to read:

"§279.82 Use as a dust suppressant. The use of used oil as a dust suppressant is prohibited." [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-12 Recordkeeping requirement for used oil generators. Used oil generators shall keep a record of each shipment of used oil that is delivered to a used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility.

(1) Records of each delivery shall include:
  (A) The name and address of the receiving facility or transporter;
  (B) The EPA identification number of the receiving facility or transporter;
  (C) The quantity of used oil delivered;
  (D) The date of delivery; and
  (E) Except as provided in paragraph (2), the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(2) Intermediate rail transporters are not required to sign the record of delivery.

(3) The records described in paragraph (1) shall be maintained for at least three years. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-13 Annual reporting requirement for used oil transporters and processors/re-refiners. (a) Each used oil transporter shall submit an annual report for the twelve-month period ending June 30. The report shall be submitted to the director not later than July 31 of each year. The report shall be

completed on forms furnished by the director and shall contain the following information concerning used oil activities:

(1) The EPA identification number, name, and address of the used oil transporter.

(2) The quantity of used oil picked up.

(3) The quantities of used oil delivered to:

(A) Another used oil transporter;

(B) A used oil processing/re-refining facility;

(C) An off-specification used oil burner;

(D) An on-specification used oil burner; and

(E) A disposal facility.

(b) Each used oil processor/re-refiner shall submit an annual report for the twelve-month period ending June 30. The report shall be submitted to the director not later than July 31 of each year. The report shall be completed on forms furnished by the director and shall contain the following information concerning used oil activities:

(1) The EPA identification number, name, and address of the used oil processor.

(2) The quantities of used oil accepted for processing/re-refining and the manner in which the used oil was processed/re-refined, including the specific processes employed.

(3) The quantities of used oil sent to:

(A) Another used oil processing/re-refining facility;

(B) An off-specification used oil burner;

(C) An on-specification used oil burner; and

(D) A disposal facility. [Eff 7/17/17; comp 9/30/18; comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-31, 342J-35, 342J-52) (Imp: HRS §§342J-4, 342J-31, 342J-35, 342J-52)

§11-279.1-14 Used oil and used oil fuel permitting system. (a) No person shall own, operate, add, extend, or modify a used oil or used oil fuel transportation or processing/re-refining facility or used oil collection center without first obtaining a permit from the department, except as provided in subsection (b). A permit shall be issued in accordance with this section and part IV of chapter 342J, HRS.

(b) Facilities exempted under section 40 C.F.R. section 279.40(a)(1) to (4), as incorporated and amended in this chapter, are not required to obtain a permit under this section. Used oil collection centers that collect oil exclusively from household "do-it-yourselfer" generators exempted from regulation by 40 C.F.R. section 279.20(a)(1), as incorporated and amended in this chapter, are not required to obtain a permit under this section.

(c) General requirements.

(1) An application for a used oil or used oil fuel permit shall be completed on forms furnished by the director.

(2) The applicant shall be the owner or operator of the facility. Each application shall contain the original signature of the applicant and shall constitute an acknowledgment that the applicant will assume responsibility for complying with this chapter and part IV of chapter 342J, HRS, with respect to the construction and operation of the facility. The application shall be signed by one of the following:

(A) In the case of a corporation, by a principal executive officer of at least the level of vice president;

(B) In the case of a partnership, by a general partner;

(C) In the case of a sole proprietorship, by the proprietor; or

(D) In the case of a county, state, or federal entity, by either a principal executive officer, ranking elected

official, or other duly authorized employee.

(3) All permit applicants shall pay a permit filing fee as required by subsection (d)(8).

(d) General conditions.

(1) The director may issue a permit that contains a requirement that the permittee complies with certain conditions.

(2) The director may add, delete, or modify any conditions on any permits.

(3) The director may grant a permit for any term, not exceeding five years, and upon application may renew a permit from time to time for a term not exceeding five years, if such is in the public interest.

(4) The permittee may request a modification of any permit condition provided that:

(A) A justification is provided to the director with the request; and

(B) No modification will be effective unless approved by the director.

(5) A permit shall not be transferred without a written application to the director by the new owner and without written approval by the director. A permit can be transferred only under the following conditions:

(A) There is no change in the operations manual; and

(B) There is a change in ownership only.

(6) Except for a court-ordered termination or termination by order of the department, all permittees shall notify the director in writing of the facility's termination of operation within ninety days of the permanent termination of the operation of a used oil facility.

(7) A person shall not willfully alter, forge, counterfeit, or falsify a permit.

(8) The permit filing fee shall be subject to the following requirements:

(A) The permit filing fee for each initial application, renewal, and modification request to DOH shall be as follows:
(i) Processor permit or collection center permit: $250.
(ii) Processor and transporter permit or collection center and transporter permit: $300.
(iii) Transporter permit: $50.
(B) There shall be no fee for permit modifications made at the director's initiative.
(C) The permit filing fee will not be refunded nor applied to any subsequent application.
(D) Fees shall be made payable to the State of Hawaii.

(e) Application for processors/re-refiners.

(1) All applications for a processing/re-refining permit shall comply with subsection (c).

(2) An application for processing/re-refining shall also include but is not limited to an operations manual. The manual shall include:
(A) A general description of the facility. This shall include, at a minimum, the name of the owner and operator, location, site information, and plot and site location plans;
(B) A description of the operations of the facility. This section shall include, at a minimum, a one-line process flow diagram, design parameters, operational units and procedures, and storage areas;
(C) A control plan for the facility. This shall describe access to the facility, drainage systems, and fire, vector, odor, and dust controls;
(D) A sampling and analysis plan for the facility. This shall include a

procedure for analysis for constituents of specification fuel. The constituents and allowable levels are specified in 40 C.F.R. section 279.11, as incorporated and amended in this chapter;

(E) A description of the reporting and recordkeeping procedures for the facility that meets the requirements of section 11-279.1-13; and

(F) A closure plan to ensure that closure will comply with 40 C.F.R. section 279.54(h), as incorporated and amended in this chapter.

(f) Application for transporters.

(1) All applications for a transportation permit shall comply with subsection (c).

(2) The following shall be submitted:

(A) A site plan of appropriate scale;

(B) An operations narrative describing the proposed activity;

(C) A plan describing suitable means to prevent and control fires, spills, releases, and stormwater runoff; and

(D) An emergency response plan.

(g) Application for collection centers.

(1) All applications for a collection center permit shall comply with subsection (c).

(2) The following shall be submitted:

(A) A site plan of appropriate scale;

(B) An operations narrative describing the proposed activity;

(C) A plan describing suitable means to prevent and control fires, spills, releases, and stormwater runoff; and

(D) An emergency response plan.

(h) Any person who violates any provision of this section shall be subject to the penalties provided in chapter 342J, HRS." [Eff 7/17/17; comp 9/30/18; am and comp 6/25/20; comp] (Auth: HRS §§342J-4, 342J-13, 342J-31, 342J-35,

342J-52) (Imp: HRS §§342J-4, 342J-9, 342J-10, 342J-31, 342J-35, 342J-52, 342J-53, 342J-54)

13. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

14. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

15. The amendment and compilation of chapters 11-260.1, 11-261.1, 11-262.1, 11-263.1, 11-264.1, 11—265.1, 11-266.1, 11-268.1, 11-270.1, 11-271.1, 11-273.1, and 11-279.1, 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 ADOPTION DATE, and filed with the Office of the Lieutenant Governor.

_____
BRUCE S. ANDERSON, Ph.D.
Director of Health

APPROVED AS TO FORM:

_____
Wade H. Hargrove III
Deputy Attorney General