

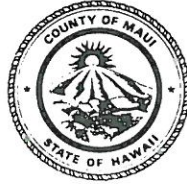
ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

Telephone: (808) 270-7745

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COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
July 13, 2016

RECEIVED
GLEN A. UENO, P.E.
Development Services Administration

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CARY YAMASHITA, P.E.
Engineering Division

OFFICE OF THE MAYOR
LESLIE L. OTANI, P.E., L.S.
Highways Division

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Elle Cochran, Chair
Infrastructure & Environmental Management Committee
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Mayor Date

Dear Chair Cochran:

**SUBJECT: Notice of Public Hearing on Changes to Hawaii Administrative Rules
Title 11, Chapter 55, Entitled "Water Pollution Control" (IEM-73)**

The attached letter is to keep you informed of the DPW's request for additional time to respond to the Department of Health's (DOH) proposed rule changes to the subject administrative rules. This is the DPW's second request to the DOH for a 60-day extension of the original public comment date to, Tuesday, August 30, 2016.

Please feel free to contact John Smith of our Engineering Division at Ext. 7745 if you require further information or have any questions.

Sincerely,


DAVID C. GOODE
Director of Public Works

DCG/JS:(ED16-612)

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(MS4 GP TIME EXT).DOC

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COUNTY OF MAUI
**DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION**

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Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

LESLI L. OTANI, P.E., L.S.
Highways Division

July 8, 2016

Virginia Pressler, M.D., Director
State of Hawaii
Department of Health
1250 Punchbowl Street
Honolulu, HI 96813

Re: REQUEST FOR ADDITIONAL COMMENT PERIOD TIME EXTENSION NOTICE OF
PUBLIC HEARING ON CHANGES TO HAWAII ADMINISTRATIVE RULES, TITLE 11,
CHAPTER 55, ENTITLED "WATER POLLUTION CONTROL"
Docket No. CWB-1-16

Dear Dr. Pressler:

On Friday, June 24, 2016, the County of Maui (County) became aware of the Department of Health (Department), Clean Water Branch's proposed amendments to the National Pollutant Discharge Elimination System (NPDES) General Permit applicable to the County and contained in Hawai'i Administrative Rules (HAR), Title 11, Chapter 55. We only became aware of these changes through our consultant who inadvertently noticed them posted inconspicuously on the Department's website. In the week leading up to the July 1, 2016 public hearing date, the County contacted other Small MS4 permittees and discovered that the majority of them were also unaware of the proposed rule changes.

On June 27, 2016, the County submitted a request to your office for an extension to the public comment period because legal notice had not been provided to the County. Specifically, the Department was required to notify the County by mail of the draft NPDES General Permit and failed to do so. Our June 27th letter documented the legal requirements. It is clear that the EPA's requirements and policies are to provide the affected parties with as much notice as possible to participate in the permitting process. In fact, the Department has yet to provide the County with notice by mail as required by law.

Rather than meeting with the County and other permittees months in advance to discuss the proposed new conditions, the Department failed to even notify the permittees that the new conditions

were proposed. Advance meetings on the amendments may have resulted in reasonable conditions that could be implemented, but the Department has failed to do so to this day. Given the lack of a meaningful time extension or any effort to meet with the permittees, the Department appears willing to spend its time fighting with the permittees in a legal challenge rather than discussing the conditions in advance.

Our June 27th letter requested a 60-day extension of the comment period so that the County could adequately assess the implications of the Department's proposed changes and provide an informed response. We understand that other Small MS4 permittees also requested a 60-day extension. Nonetheless, the State granted a 14-day extension for public comment, which is insufficient.

Our initial review of the proposed changes to HAR 11-55, Appendix K, indicates that the changes are impractical and inappropriate to impose on Small MS4 General permittees. The Department is proposing to add multiple conditions to the General Permit, including expanding the geographic reach of the Maui Small MS4 General Permit, and significantly increasing the complexity and obligations for programs. It appears that the Department's chief motivation for the drastic permit changes is to reduce their workload by covering more permittees under the General Permit. To allow discharges to Class AA and Class 1 waters to be covered under the General Permit, the Department proposes to make all General Permit holders subject to similar requirements currently required of Large MS4 individual permit holders. The EPA clearly distinguishes between Phase I (usually individual permit holders) and Phase II (mostly general permit holders) and the level of permit program that is appropriate for the size and resources of entities in the two categories. The Department's proposed revisions will unfairly and unnecessarily increase the permit program expenses of Small MS4 permittees that have been previously able to obtain coverage under the General Permit because they do not discharge to these sensitive waters.

In addition to drastically increasing the scope of program requirements for Small MS4 General Permits, many of the proposed revisions are too prescriptive, and do not give the Small MS4 permittees discretion to evaluate and allocate their limited resources in the manner it believes would best protect water quality. Permittees should be given the authority to develop a storm water management program that is practicable, suitable for their operations, and meets their fiscal realities, and gives them the discretion to focus their resources on measures that would best protect water quality. The prescriptive nature of the Department's proposed revisions far exceeds the guidance of the EPA's Phase II permit program for Small MS4s.

Many of the Department's proposed revisions attempt to make the Small MS4 permittees responsible to enforce State permit obligations under the Clean Water Act. The Department has an obligation under State and Federal law to monitor and enforce their own permits, and the Small MS4 General Permit scope cannot and should not be expanded to shift the Department's responsibilities to ill-equipped permittees. We question the Department's authority in what appears to be imposing an unfunded mandate on the County that may be in violation of the State constitution.

For many of their proposed revisions to Appendix K, the Department requires onerous actions to be taken, programs to be established and deliverables to be submitted within 18 months from the effective date of the Permit. The majority of these actions, programs and deliverables are copied from the Individual Permit language that the Department has recently proposed on Phase I permittee holders. These Phase I programs have been developed and negotiated over more than 20 years of permit iterations and program implementation. To require Small MS4 permittees with much more limited resources to accomplish any of these actions, programs and deliverables at all, and especially within 18 months, sets up the Permittees for failure. The cost for a Small MS4 to retool for the proposed egregious permit requirements is practically impossible in real and political terms. The reality is that making Permittees comply with these requirements would mean drastic cuts in other essential programs.

We have also identified significant concerns with the proposed revisions to Appendices F and G that will greatly increase the cost of construction. Requiring daily sampling for dewatering projects, for example, with no allowance for the sensible lessening of sampling requirements as the project proceeds, places an unreasonable burden on construction projects that do not discharge to Class AA or Class 1 waters.

Given the significance of the proposed changes to HAR 11-55 described above, and the great potential impact to Small MS4 Permit holders, construction industry permittees, and others, it was incumbent upon the Department to follow the EPA's regulations and guidance in ensuring that affected parties were aware of the proposed changes and had the opportunity to adequately respond. The finalization of the General Permit terms is very significant, as there is no subsequent opportunity for permittees to negotiate permit terms. Permittees need time for stakeholder meetings, budget analysis, legal analysis, and interagency collaboration to help them understand the implications of the proposed rules and to allow them to provide meaningful comments.

Based on the onerous nature of the proposed permit changes described herein, we again request a 60-day extension of the original public comment date, to Tuesday, August 30, 2016, so that affected parties can provide comments to the far reaching amendments proposed by the Department. We request your response to this request as soon as possible, but in any event no later than Wednesday, July 13th, so that we are aware of your response prior to the current comment extension date of July 15, 2016. While this request originates with the County of Maui, it has the full support of other Small MS4 permittees whose signatures are attached.

Sincerely,

A handwritten signature in dark ink, appearing to read "David C. Goode", with a stylized flourish at the end.

DAVID C. GOODE
Director of Public Works

Virginia Pressler, M.D., Director

July 8, 2016

Page 4 of 4

DCG/JS (ED16-608)

Attachment - Supporting Signatures of other Hawai'i MS4 Permittees and Affected Parties

cc: David Ige, Governor, State of Hawaii
Shan Tsutsui, Lt. Governor, State of Hawai'i
Tulsi Gabbard, Congresswoman, 2nd Congressional District
Alan Arakawa, Mayor, County of Maui
Mike White, Maui County Council Chair ✓
Michael Hopper, Deputy Corporation Counsel, County of Maui
Keith Kawaoka, Deputy Director for Environmental Health
Edward Bohlen, Deputy Attorney General for CWB
Eugene Bromley, U.S. EPA Region 9
Alec Wong, Chief, Clean Water Branch
Darryl Lum, Engineering Section Supervisor, Clean Water Branch



DEPARTMENT OF THE NAVY
PEARL HARBOR NAVAL SHIPYARD
AND INTERMEDIATE MAINTENANCE FACILITY
667 SAFEGUARD ST SUITE 100
JBPHH, HAWAII 96860-5033

IN REPLY REFER TO:

5090

Ser 106.3/059

Director of Health
Hawaii State Department of Health
1250 Punchbowl Street, Third Floor
Honolulu, HI 96813

JUL 12 2016

Dear Director:

SUBJECT: COMMENT PERIOD FOR PROPOSED AMENDMENTS TO HAR 11-55

On May 31, 2016 the State of Hawaii, Department of Health, Clean Water Branch, proposed extensive amendments to Hawaii Administrative Rules, Title 11, Chapter 55 (HAR 11-55), entitled "Water Pollution Control" (Docket No. CWB-1-17). The Department of Health provided a 30-day comment period, which has been extended to July 15, 2016. Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility (PHNSY&IMF) needs additional time to prepare and submit our comments on the proposed amendments. The County of Maui shared with us their rationale for requesting an additional extension of the comment period (see enclosed letter). PHNSY&IMF hereby joins the County of Maui in requesting a 60-day extension of the original public comment period to Tuesday, August 30, 2016.

Sincerely,

J. TAMASHIRO
Director, Occupational Safety,
Health and Environment Office

Enclosure: Letter from County of Maui, Director of Public Works, to Hawaii Department of Health requesting extension of comment period.

Copy to: Director of Public Works, County of Maui
Director of Clean Water Branch, Hawaii Department of Health



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



David Y. Ige
Governor

John Whalen
Chairperson

Aedward Los Banos
Interim Executive Director

Ref. No.: ENGR 2.2.5.3A

July 11, 2016

MEMORANDUM

TO: Virginia Pressler, M.D., Director
Department of Health

FROM: Aedward Los Banos, Interim Executive Director
Hawaii Community Development Authority *Aedward Los Banos*

SUBJECT: County of Maui's Request for Additional Comment Period Time
Extension Relating to Hawaii Administrative Rules, Title 11,
Chapter 55, Entitled "Water Pollution Control" Docket No.
CWB-1-16

The Hawaii Community Development Authority (HCDA) submitted its written comments relating to the proposed changes to Title 11, Chapter 55, Hawaii Administrative Rules (HAR), at the July 1, 2016 public hearing conducted by the Department of Health.

At the public hearing, your staff stated that the notice of public hearing was published in May 2016; however, like several other affected parties, the HCDA became aware of the public hearing and the due date for comments about a week prior to the date of the public hearing. The HCDA further understands that some of the other affected parties need more time to prepare comments or additional comments, beyond the July 15, 2016 extension date that was also announced at the public hearing.

In that regard, the HCDA supports the County of Maui's request for an extension of the due date for public comments to Tuesday, August 30, 2016, so that all affected parties may provide comments to the proposed rule changes.

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Honolulu, Hawaii
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