

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

June 26, 2013

GLENN M. OKIMOTO
DIRECTOR


Deputy Directors
JADE T. BUTAY
FORD N. FUCHIGAMI
RANDY GRUNE
JADINE URASAKI

IN REPLY REFER TO:
HWY 1784
HWY-OW
2.13-0752

2013 JUN 28 9:23AM

TO: THE HONORABLE LORETTA J. FUDDY, A.C.S.W., M.P.H.
DIRECTOR OF HEALTH

ATTN: ALEC WONG, P.E., CHIEF
CLEAN WATER BRANCH

FROM: GLENN M. OKIMOTO, Ph.D.
DIRECTOR OF TRANSPORTATION 

SUBJECT: COMMENTS ON PROPOSED NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMIT
DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION
MUNICIPAL SEPARATE STORM SEWER SYSTEM,
ISLAND OF OAHU, HAWAII
NPDES PERMIT NO. HI S000001

In accordance with Docket No. 13-CW-PW-78, the State of Hawaii Department of Transportation, Highways Division, Oahu District is pleased to submit the attached comments regarding the proposed NPDES permit.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Should you have any further questions, please contact Mr. Kelly Lee Sato at 483-2569.

Att: Comments on May 31, 2013 Public Notice Permit

EXHIBIT B

Comments on May 31, 2013 Public Notice Permit

PERMIT NO. HI S000001

1. **Part D.1.a.(1)** - *Targeted Groups* - *The Permittee shall address the following targeted groups in the public education plan with appropriate messages, and shall describe outreach activities and anticipated frequencies that each activity will be conducted over the permit term:*

- *Locations of illicit discharges*
- *Homeowners, School Children, and the General Public*
- *DOT-HWYS employees*
- *DOT-HWYS consultants*
- *Construction industry*
- *Industrial facilities covered by the NPDES permit program*
- *Commercial businesses such as landscape service and maintenance (e.g., to prevent the use of leaf blowers from blowing material into the drainage structures), automobile detailing, automobile repair and maintenance, retail gasoline outlets, and restaurants, including those types of businesses highly ranked, according to relative risk of discharge of contaminated runoff to the DOT-HWYS MS4. Refer to Part D.1.g.(4).*
- *Department of Agriculture*
- *Department of Education*
- *Department of Hawaiian Home Lands*
- *Department of Land and Natural Resources*
- *National Resources Conservation Services*
- *Any other source that the Permittee determines may contribute a significant pollutant load to its MS4*

Comment: The State of Hawaii Department of Transportation Highways Division (DOT-HWYS) requests to revise the second to the last bullet to read:

“Natural Resources Conservation Service”

The rationale for this request is that DOT-HWYS believes that the United States Department of Agriculture Natural Resources Conservation Service is the correct organization referenced.

2. **Part D.1.c.(5).(i)** - *Establish policies for enforcement and rules for penalties when in noncompliance with its requirements as developed in accordance with Part D.1.c.(1), including for person illegally discharging pollutants to its MS4*

Comment: DOT-HWYS requests to revise this section to read:

“Establish policies for enforcement and penalties when in noncompliance with its

requirements as developed in accordance with Part D.1.c.(1), including for person illegally discharging pollutants to its MS4”

The rationale behind this request is that DOT-HWYS does not have the authority to establish rules. HRS §342D-2 states, “The director [DOH] may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.” The Environmental Protection Agency (EPA) has acknowledged this limitation. EPA’s *MS4 Permit Improvement Guide* (2010) states, “A major difference between a traditional MS4 and a non-traditional MS4 (such as a DOT, military base, or university) is often the scope of legal authority available to the MS4. Non-traditional MS4 permittees often cannot pass “ordinances” nor do they have enforcement authority like a typical municipality, so legal authority may consist of policies, standards, or specific contract language. Non-traditional MS4 permittees also do not generally have the authority to impose a monetary penalty.”

Furthermore, DOT-HWYS is committed to developing an enforcement policy that will ensure the proper implementation of the National Pollutant Discharge Elimination System (NPDES) permit and the Storm Water Management Program Plan (SWMPP).

3. **Part D.1.d.(3).(i)** - *Prior to construction plan approval, review the applicable Site-Specific BMP Plan and other plans relating to pollution prevention (e.g., Erosion and Sediment Control, Grading, Post-construction BMP and Landscaping Plans) or similar document(s) to verify that meets the following requirements:*

- *DOT-HWYS' standards (e.g., Standard Specifications and/or Special Provisions);*
- *HAR, Chapter 11-55, Appendix C, and any other requirements under the NPDES permit program, as applicable; and*
- *Implementation of measures to ensure that the discharge of pollutants from the site will be reduced to the appropriate discharge limitations subject to the Best Available Technology currently available (BAT)/ Best Conventional Pollutant Control Technology (BCT) discharge requirement, consistent with the CWA and other respective federal and state requirements for such facilities and will not cause or contribute to an exceedance of water quality standards.*

Comment: DOT-HWYS requests that this Part be modified to read:

“Prior to approval of the construction plans and specifications, DOT-HWYS shall review the appropriate Site-Specific BMP Plan and other pollution prevention measures (e.g., Erosion and Sediment Control, Grading, Post-construction BMP and Landscaping) or similar plan(s)/document(s) to verify that it meets the following requirements:

- DOT-HWYS' Standard Specifications and Special Provisions;
- DOT-HWYS' Construction BMP Field Manual;
- DOT-HWYS' Storm Water Permanent Best Management Practices Manual;
- DOT-HWYS' Maintenance Activities Best Management Practices Field Manual;

- HAR, Chapter 11-55, Appendix C, and any other requirements under the NPDES permit program, as applicable; and
 - Implementation of measures to ensure that the discharge of pollutants from the site will be reduced to the appropriate discharge limitations subject to the Best Available Technology currently available (BAT)/ Best Conventional Pollutant Control Technology (BCT) discharge requirement, consistent with the CWA and other respective federal and state requirements for such facilities and will not cause or contribute to an exceedance of water quality standards.”
4. **D.1.d.(3).(ii)** - *Require a permit or written equivalent approval for drainage connections to its MS4, discharge of surface storm water runoff of storm water associated with construction (i.e., from both private and public projects) or discharge permit (i.e., hydrotesting and dewatering effluent or other non-storm water, except those allowed under this permit) into their MS4 and maintain a database of the permits/approvals. Prior to issuing a drainage connection, discharge of surface runoff permit/approval, discharge permit, Permit to Perform Work Upon State Highways, or encroachment permit the Permittee shall ensure that the following are met:*
- *The project owner has provided proof of filing an NOI Form C or NPDES application for the discharge of storm water associated with construction activities that disturb one (1) acre or more;*
 - *The project owner has provided proof of filing a NOI Form F and/or G or NPDES application for the discharge, if applicable; and*
 - *A Site-Specific BMP Plan or other documents (e.g., Erosion and Sediment Control, Grading, Post-construction BMP and Landscaping Plans, Dewatering Plan, and Hydrotesting Plan) relating to pollution prevention or similar document(s) have been reviewed and approved by DOT-HWYS*

Comment: DOT-HWYS requests to revise the last bullet to read:

“A Site-Specific BMP Plan or other documents (e.g., Erosion and Sediment Control, Grading, Post-construction BMP and Landscaping Plans, Dewatering Plan, and Hydrotesting Plan) relating to pollution prevention or similar document(s) have been reviewed and accepted by DOT-HWYS”

The rationale for this request is that DOT-HWYS does not approve all of these documents but reviews the documents for consistency with its program requirements. Similarly, it is the State of Hawaii Department of Health’s (DOH) policy not to approve these documents but rather to review and accept them.

5. **D.1.d.(3).(iv)** - *Within 90 calendar days of the effective date of this permit, the Permittee shall update and submit for review and acceptance, a plan review checklist that its reviewers shall use in evaluating the plans and BMPs or other similar document(s) which have been implemented pursuant to this Part [i.e., Part D.1.d.]. Copies of this plan review checklist shall be provided to applicants for connection, discharge, and encroachment permits and permits to perform work upon State Highways; and to*

consultants and contractors for their use in developing the Plans or other similar document(s) for DOT-HWYS-contracted construction projects. The plan review checklist shall include, at a minimum, but not be limited to comments on any deficiencies and the date when comments were addressed to the satisfaction of DOT-HWYS. A system shall be implemented to ensure all comments, identified during the review process has been properly addressed. A copy of the plan being reviewed shall be attached to the plan review checklist.

Comment: DOT-HWYS requests to omit the last sentence, “A copy of the plan being reviewed shall be attached to the plan review checklist.”

The rationale for this request stems from the fact that DOT-HWYS currently has an efficient system in place to ensure that all comments are addressed. Furthermore, DOH has not provided any reasoning as to why a more prescriptive procedure is needed. DOT-HWYS is committed to ensure all comments identified during the review process are properly addressed.

6. **Part D.1.d.(4).(i)** - *Prior to the initiation of ground-disturbing activities at any site, except for activities associated with the installation of BMPs at a site, an engineer or qualified inspector employed or retained by the Permittee who reviews and becomes familiar with the project’s site-specific BMP Plan and/or other equivalent document(s), shall inspect the site to verify BMPs as required by the BMP Plan and/or other documents have been installed correctly and in the correct locations prior to the commencement of ground-disturbing activity. Inspections shall include a review of site Erosion and Sediment Controls, good housekeeping practices, and compliance with DOT-HWYS-approved erosion and sediment control plans, construction BMPs Plans, or other similar documents and DOT-HWYS approved permits. The inspector shall also identify and remedy any site conditions having the potential for erosion and sediment runoff, including other pollutant discharges which may not have been addressed within the project documents.*

Comment: DOT-HWYS requests to revise the last sentence to read:

“DOT-HWYS shall also identify and remedy any site conditions having the potential for erosion and sediment runoff as a result of the project’s construction activities.”

The rationale for this request is that the inspector does not have the authority to remedy site conditions. Therefore, DOT-HWYS requests to change the reference to DOT-HWYS.

Furthermore, DOT-HWYS feels this paragraph is too broad and makes Oahu District Construction responsible for any condition that has the potential for erosion and sediment runoff whether it is a result of the construction project or not. The potential for erosion and sediment runoff unrelated to construction projects’ activities is the responsibility of the Pollution Prevention/Good Housekeeping Program, not the construction project.

7. **Part D.1.d.(4).(iv)** - *Develop and implement a standard inspection form(s) and reporting and corrective procedures for inspections, including use of an inspection checklist, or equivalent, and the Permittee shall track inspection results in a database or equivalent system. The inspection checklist shall, include at a minimum, but not be limited to identifying any deficiencies and the date of the corrective actions. A site map shall accompany the inspection checklist, which notes the locations of the deficiencies. The inspection form(s), inspection checklist, reporting and corrective procedures shall be submitted to DOH for review and acceptance within 90 calendar days of the effective date of this permit.*

Comment 1: DOT-HWYS requests to revise the first sentence to read:

“Develop and implement a standard inspection form(s) and reporting and corrective procedures for independent inspections, including use of an inspection checklist, or equivalent, and the Permittee shall track inspection results in a database or equivalent system.”

The rationale for this request is to clarify to which types of inspections this requirement applies to. It is DOT-HWYS understanding that this requirement is intended for the independent inspections as described in D.1.d.(4).(ii) and D.1.d.(4).(iii) and the suggested revision helps to distinguish that.

Comment 2: DOT-HWYS requests to delete the third sentence, “A site map shall accompany the inspection checklist, which notes the locations of deficiencies.”

The rationale for this request stems from the fact that DOT-HWYS currently has a successful inspection process in place, which efficiently identifies deficiencies. Furthermore, DOH has not provided any reasoning as to why a more prescriptive procedure is needed.

8. **Part D.1.d.(5).(i)** - *Establish policies for enforcement and rules for penalties for those in non-compliance with Part D.1.d.(1) requiring the implementation of standards*

Comment: DOT-HWYS requests to revise this section to read:

“Establish policies for enforcement and penalties for those in non-compliance with Part D.1.d.(1) requiring the implementation of standards”

The rationale behind this request is that DOT-HWYS does not have the authority to establish rules. HRS §342D-2 states, “The director [DOH] may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.” The EPA has acknowledged this limitation. EPA’s *MS4 Permit Improvement Guide* (2010) states, “A major difference between a traditional MS4 and a non-traditional MS4 (such as a DOT, military base, or university) is often the scope of legal authority available to the MS4. Non-traditional MS4 permittees often cannot pass

“ordinances” nor do they have enforcement authority like a typical municipality, so legal authority may consist of policies, standards, or specific contract language. Non-traditional MS4 permittees also do not generally have the authority to impose a monetary penalty.”

Furthermore, DOT-HWYS is committed to developing an enforcement policy that ensures the implementation of the NPDES permit and the SWMPP.

9. **Part D.1.d.(7) - Training** - *The Permittee shall provide annual training on the Construction BMPs Program Plan to all DOT-HWYS staff with construction storm water responsibilities, including construction engineers, maintenance staff, and plan reviewers. This training shall be specific to DOT-HWYS activities (including the proper installation and maintenance of approved BMPs), policies, rules and procedures.*

Comment: DOT-HWYS requests to replace “maintenance staff” with “construction and maintenance inspectors”. The rationale for this revision is that these are the individuals involved in the Construction Site Runoff Control program and should be included as the audience for any construction training.

10. **Part D.1.e.(1) - Standards Revision** – *The Permittee shall revise its standards for addressing post-construction BMPs to include Low Impact Development (LID) requirements. Within six (6) months of the effective date of this permit, the Permittee shall submit to DOH for review and acceptance, a plan for requiring LID in the standards to the MEP, including revision to the plan review and inspection checklist to include LID. LID refers to storm water management practices which seek to mimic a site’s predevelopment hydrology by minimizing disturbed areas and impervious cover and then infiltrating, storing, detaining, evapotranspiring, and/or biotreating storm water runoff close to its source. The standards shall be applicable to all construction projects disturbing at least one (1) acre and smaller projects that have the potential to discharge pollutants to the DOT-HWYS’ MS4. LID employs principles such as preserving and recreating natural landscape features and minimizing imperviousness to create functional and appealing site drainage that treats storm water as a resource, rather than a waste product. LID treatment measures include harvesting and use, infiltration, evapotranspiration, or biotreatment. The plan for the implementation of LID provisions in the DOT-HWYS’ standards shall include at a minimum the following:*

- *Criteria for requiring implementation.*
- *Investigation into the development of quantitative criteria for a specific design storm to be managed by LID techniques. Examples of design storm requirements include: 24-hour, 85% storm through infiltration; on-site management of the first inch of rainfall within a 24-hour period; retention of the 100-year, 2-hour storm; or on-site management of the 24-hour, 95% storm.*
- *Feasibility criteria for circumstances in which a waiver could be granted for the LID requirements.*
- *When a LID waiver is granted, alternatives such as offsite mitigation and/or non-LID treatment control BMPs could be required.*

A draft of the revised Standards shall be submitted to the DOH in accordance with Part A.6. for review and acceptance within 12 months after the effective date of this permit and include at a minimum the above. Within 18 months after the effective date of this permit, subject to adoption by rulemaking or other equivalent process, the revised Standards shall be submitted to the DOH in accordance with Part A.6. To the extent that the revised Standards have not been adopted, the Permittee shall submit a compliance schedule for adoption, which shall not exceed 24 months after the effective date of this permit.

Comment: Regarding the second sentence in the first paragraph, “Within six (6) months of the effective date of this permit, the Permittee shall submit to DOH for review and acceptance, a plan for requiring LID in the standards to the MEP, including revision to the plan review and inspection checklist to include LID”, DOT-HWYS wishes to clarify if this plan review and inspection checklist is referring to the existing permanent BMP checklist.

11. **Part D.1.f.(1).(v)** - *Trash Reduction Plan - Within 12 months of the effective date of this permit, the Permittee shall develop and submit to DOH for review and acceptance, a trash reduction plan which assesses the issue, identifies and implements control measures, and monitor these activities to reduce trash loads from the MS4. The plan shall include, at a minimum and be formatted consistent with the following:*

- *Quantitative estimate of the debris currently being discharged (baseline load) from the MS4, including methodology used to determine the load.*
- *Description of control measures currently being implemented as well as those needed to reduce debris discharges from the MS4 consistent with short-term and long-term reduction targets.*
- *A short-term plan and proposed compliance deadline for reducing debris discharges from the MS4 by 50% from the baseline load.*
- *A long-term plan and proposed compliance deadline for reducing debris discharges from the MS4 to zero.*
- *Geographical targets for trash reduction activities with priority on waterbodies listed as impaired for trash on the State’s CWA Section 303(d) list.*
- *Trash reduction-related education activities as a component of Part D.1.a.*
- *Integration of control measures, education and monitoring to measure progress toward reducing trash discharges.*
- *An implementation schedule.*
- *Monitoring plan to aid with source identification and loading patterns as well as measuring progress in reducing the debris discharges from the MS4.*
- *The Annual Report shall include a summary of its trash load reduction actions (control measures and best management practices) including the types of actions and levels of implementation, the total trash loads and dominant types of trash removed by its actions, and the total trash loads and dominant types of trash for each type of action.*

The plan shall provide for compliance with the above short-term and long-term discharge limits in the shortest practicable timeframe.

Comment: DOT-HWYS requests to modify the first bullet to read:

- “Methodology that will be used to determine the baseline load”

The rationale for this request is that establishing a sound baseline load will require an assessment well in excess of one year, considering it will be island-wide and will require multiple assessments from multiple wet/dry seasons, as supported by the following references:

- The City and County of Honolulu’s Trash Reduction Plan provided a four year timeframe in which to establish a baseline load.
- The San Francisco Bay municipal separate storm sewer system (MS4) permit, Order R2-2009-0074, issued in October 2009, states, “Each Permittee, working collaboratively or individually, shall determine the baseline trash load from its MS4 to establish the basis for trash load reductions and submit the determined load level to the Water Board by February 2, 2012”, thereby providing the MS4 permittee over two years to develop the baseline load.
- *A Rapid Trash Assessment Method Applied to Waters of the San Francisco Bay Region: Trash Measurement in Streams* (April 2007) included a three-year long baseline study as indicated in the statement, “The 93 site visits conducted by Water Board staff and students over three years and multiple seasons confirmed that high levels of trash are present throughout urban streams in the San Francisco Bay Region.”

12. **Part D.1.g.(1)** - *Requirement to Implement BMPs - Require a permit or written equivalent approval for drainage connections and discharge of surface runoff into the MS4 and maintain a database of the permits/approvals. The permit/approval shall obligate the facility to implement BMPs.*

Comment: DOT-HWYS requests to replace Part D.1.g.(1) of the Permit with the following:

“Requirement to Implement BMPs - Require a permit or written equivalent approval for drainage connections and maintain a database of the permits/approvals. The permit/approval shall require the facility to comply with DOT-HWYS requirements to minimize pollutant discharges into the Oahu MS4.”

DOT-HWYS requests to remove the requirement of a permit or written equivalent approval for the discharge of surface runoff and revise the second sentence for the following reasons:

1. DOT-HWYS considers the issuance of a permit or written equivalent approval for discharge of surface runoff from industrial facilities into the MS4 to be a

duplication of the NPDES general permit that authorizes discharges of storm water associated with industrial activities. This duplication of effort will take away resources from other aspects of the program such as inspections and public education. For example, the CAL TRANS NPDES MS4 permit (order no. 2012-0011-DWQ NPDES No. CAS000003) only includes education requirements for industrial and commercial properties.

2. The Hawaii Administrative Rules (HAR) 11-55 Appendix B covers discharges of storm water runoff associated with industrial activity, as defined in 40 Code of Federal Regulations (CFR) 122.26(b). (14).(i) through 40 CFR 122.26 (b).(14).(ix) and 40 CFR 122.26 (b).(14).(xi). HAR 11-55 Appendix B states, “the permittee shall consider the use of containment structures, covering materials by roof or tarpaulin, preventive maintenance, good housekeeping measures, waste minimization, removal of exposed pollutants, and spill prevention practices.” It is DOT-HWYS position that it cannot obligate industrial and commercial facilities to implement BMPs while the regulation (HAR 11-55 Appendix B) uses the flexible term, “consider”.
3. The HAR 11-55 Appendix B only regulates storm water runoff from industrial activity. There are no HAR regulations detailing BMP requirements for commercial facilities or activities. For this reason, DOH does not have the authority to issue an NPDES general permit for storm water runoff from commercial properties nor does it have the authority to obligate commercial facilities to implement BMPs, which makes it unreasonable for DOT-HWYS to be required to do so.
4. Additionally, storm water runoff from commercial facilities is not regulated throughout EPA Region 9. For example:
 - Nevada Department of Transportation’s (NDOT) MS4 Permit only requires NDOT to develop an industrial facility inspection program and does not include inspections of commercial facilities (NDOT Stormwater Management Program March 2013).
 - Arizona Department of Transportation (ADOT) (SWMP March 2010) issues discharge permits for surface runoff for only Industrial Facilities. ADOT does not require a surface runoff permit for storm water discharges associated with commercial activities or compliance inspections of commercial facilities.
 - As previously mentioned, CAL TRANS NPDES MS4 permit (SWMP updated July 2012) only includes education requirements for industrial and commercial properties.

Therefore, the above permit stipulations in Part D.1.g.(1) are not consistent with the stipulations of other DOT NPDES MS4 permits within EPA Region 9.

13. **Part D.1.g.(4) - Prioritized Areas for Industrial and Commercial Facility and Activity Inspections - The Permittee shall implement the Prioritized Areas for Industrial and Commercial Facility and Activity Plan (refer to the SWMP Plan, Appendix L.2).** Under

that Plan, the Permittee is to designate priority areas for industrial and commercial facility and activity inspections, based on the relative risk that any discharge might be contaminated with pollutants.

Within 60 calendar days of the effective date of this permit, the Permittee shall submit a status report to DOH. The status report shall identify the numbers of industrial and commercial facilities discharging into the Oahu MS4 and the number of inspections that have been completed during the prior permit term. The status report shall be organized by priority area. On an annual basis, the Permittee shall modify the Plan based on updated information from its industrial and commercial inventory, findings from previous inspections, the number of industrial and commercial facilities in the area, the density of these facilities, previous storm water violations in the area, and water quality impairments in the area. The modified Plan shall set a schedule that ensures inspections will be completed in accordance with the schedule in Part D.1.g.(4). This Plan shall be submitted with the Permittee's annual report.

Comment: DOT-HWYS requests that the second to the last sentence be revised to read:

“The modified Plan shall set a schedule that ensures inspections will be completed in accordance with the schedule in Part D.1.g.(5).”

The rationale for this request is that due to revisions to the draft permit, the part being referenced has since been changed to D.1.g.(5). This change is not reflected in the text.

14. **Part D.1.g.(5) - Inspection of Industrial and Commercial Facilities and Activities -**
The industrial/commercial inspection program shall be implemented and updated as appropriate to reflect the outcomes of the investigations.

The Permittee shall ensure industrial and commercial facilities and activities identified in the industrial and commercial inventories required under Parts D.1.g.(1) and D.1.g.(2) are inspected and re-inspected as often as necessary based on its findings to ensure corrective action were taken and the deficiency resolved.

At a minimum, the Permittee shall inspect each industrial facility that does not have NPDES permit coverage under the NPDES permit program at least twice every five (5) years, and each industrial facility that does have such NPDES permit coverage at least once every five (5) years. Any industrial facility discharging Industrial Storm Water (as defined by 40 C.F.R. Part 122.26(b)(14)) that does not have NPDES Permit coverage shall be reported to DOH within 30 calendar days of the inspection. Commercial dischargers are to be ranked according to relative risk of discharge of contaminated runoff to the DOT-HWYS MS4. The highly ranked commercial facilities shall be inspected at least once every five (5) years.

All inspections shall be in accordance with the applicable portions (e.g., Chapter 11 – Storm Water) of the "NPDES Compliance Inspection Manual" (EPA 305-X-04-001), dated July 2004. Inspectors shall be trained to identify deficiencies, assess potential

impacts to receiving waters, evaluate the appropriateness and effectiveness of deployed BMPs, and require controls to prevent discharge of pollutants to the DOT-HWYS MS4. The inspectors shall use an inspection checklist, or equivalent, and photographs to document site conditions and BMP conditions. Records of all inspections shall be maintained for a minimum of five (5) years, or as otherwise indicated.

The Permittee shall submit semi-annual inspection report(s) to the DOH by October 31st and April 30th for inspections done within the previous period.

Comment 1: DOT-HWYS requests that the second paragraph be revised to read:

“The Permittee shall ensure industrial and commercial facilities and activities identified in the industrial and commercial inventories required under Parts D.1.g.(2) and D.1.g.(3) are inspected and re-inspected as often as necessary based on its findings to ensure corrective action was taken and the deficiency was resolved.”

The rationale for this request is that due to revisions to the draft permit, the part being referenced has since been changed to D.1.g.(2) and D.1.g.(3). This change is not reflected in the text. Furthermore, the suggested grammatical changes make the section clearer.

Comment 2: DOT-HWYS requests to revise the second sentence of the fourth paragraph to read:

“Inspectors shall be trained to identify deficiencies, assess potential impacts to receiving waters, evaluate the appropriateness and effectiveness of deployed BMPs, and require controls to reduce the discharge of pollutants to the DOT-HWYS MS4 to the MEP.”

The rationale for this request is to be consistent with the terminology used Part D.1.g.

15. **Part D.1.g.(6) – Storm Water Pollution Control Plan (SWPCP) Review and Approval for Industrial Facilities - Prior to SWPCP approval, the Permittee shall:**

(i) Verify the facility owner has received NPDES permit coverage for the discharge of storm water associated with industrial activity or provided proof of filing an NOI, or NPDES application; and

(ii) A Site-Specific Storm Water Pollution Control Plan (SWPCP) or other plans relating to pollution prevention or similar document(s) have been reviewed and approved by DOT-HWYS.

Comment: DOT-HWYS requests to revise this part to read:

“Storm Water Pollution Control Plan (SWPCP) Review and Acceptance for Industrial Facilities - The Permittee shall:

(i) Verify the facility owner has received NPDES permit coverage for the discharge of storm water associated with industrial activity or provided proof of filing an NOI, or NPDES application; and

(ii) Review and accept a Site-Specific Storm Water Pollution Control Plan (SWPCP), other plans relating to pollution prevention, or similar document(s) that have been provided to DOT-HWYS.”

DOT-HWYS maintains that the requirement to review Storm Water Pollution Control Plans (SWPCP) for industrial facilities is a redundant effort since DOH has a process to do the same. This duplication of effort takes away resources from other aspects of the programs such as inspections and public education. DOT-HWYS current process is to verify whether or not the facility owner has NPDES permit coverage for the discharge of storm water associated with industrial activity. In the event that an industrial facility has not obtained NPDES permit coverage, oral notification is provided to DOH within one week and a written notification is provided within two weeks. As a prudent step in the inspection process, DOT-HWYS does, however, review SWPCPs prior to industrial facility inspections.

Because DOT-HWYS currently reviews SWPCPs as a part of its inspection procedures (after the industrial facility has obtained an NPDES general permit authorizing discharges of storm water associated with industrial activities), DOT-HWYS requests to replace all references of SWPCP “approval” and “approved” with “acceptance” and “accept”, respectively, for the following reasons:

1. In accordance with the HAR 11-55 Appendix B, the review and acceptance of the SWPCP is integral to the NPDES general permit authorizing discharges of storm water associated with industrial activities. HAR 11-55 Appendix B states, “The permittee shall implement its SWPCP upon submittal to the Director.” Since the industrial facility requesting coverage under NPDES general permit has to submit a SWPCP along with the notice of intent to DOH, the responsibility to review and approve the SWPCP lies with DOH. Furthermore, DOH itself does not “approve” SWPCPs, which makes it unreasonable for DOT-HWYS to be required to do so.
2. The terminology “review and accept” is consistent with Part E.3 of the DOT-HWYS MS4 Permit, which states that “The Permittee shall submit within 90 calendar days from the effective date of this permit for review and acceptance, the CWB NOI General Form, CWB NOI Form B and SWPCP for each baseyard, which has not yet been submitted and be included within its SWMP Plan. The SWPCPs must be implemented upon submittal to DOH.”

16. Part D.1.g.(7) - Enforcement Policy for Industrial Facilities and Activities - Within one (1) year of the effective date of this permit, the Permittee shall establish and implement its own policies for enforcement and rules for penalties for industrial or

commercial facilities which have failed to comply. The policy shall be part of an overall escalating enforcement policy and must consist of the following:

- *Conducting inspections.*
- *Issuance of written documentation to a facility representative within 30 calendar days of storm water deficiencies identified during inspection. Documentation must include copies of all field notes, correspondence, photographs, and sampling results if applicable.*
- *A timeline for correction of the deficiencies.*
- *Provisions for re-inspection and pursuing enforcement actions, if necessary.*

In the event the Permittee has exhausted all available sanctions and cannot bring a facility or activity into compliance with its rules and this permit, or otherwise deems the facility or activity an immediate and significant threat to water quality, the Permittee shall provide e-mail notification to cleanwaterbranch@doh.hawaii.gov, Attn: Enforcement Section Supervisor within one (1) week of such determination. E-mail notification shall be followed by written notification and include a copy of all inspection checklists, notes, photographs, and related correspondence in pdf format (300 minimum dpi) in accordance with Part A.6. within two (2) weeks of the determination. In instances where an inspector identifies a facility that has not applied for the General Industrial Storm Water permit coverage or any other applicable NPDES permit, the Permittee shall provide email notification to DOH within one (1) week of such determination.

Comment 1: DOT-HWYS requests to revise the first sentence to read:

“Within one (1) year of the effective date of this permit, the Permittee shall establish and implement its own policies for enforcement and penalties for industrial or commercial facilities which have failed to comply.”

The rationale behind this request is that DOT-HWYS does not have the authority to establish rules. HRS §342D-2 states, “The director [DOH] may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.” The Environmental Protection Agency (EPA) has acknowledged this limitation. EPA’s *MS4 Permit Improvement Guide* (2010) states, “A major difference between a traditional MS4 and a non-traditional MS4 (such as a DOT, military base, or university) is often the scope of legal authority available to the MS4. Non-traditional MS4 permittees often cannot pass “ordinances” nor do they have enforcement authority like a typical municipality, so legal authority may consist of policies, standards, or specific contract language.”

Furthermore, DOT-HWYS is committed to developing an enforcement policy that ensures the implementation of the NPDES permit and the SWMPP.

Comment 2: DOT-HWYS requests to revise the first sentence of the second paragraph to read:

“In the event the Permittee has exhausted all available sanctions and cannot bring a facility or activity into compliance with its policies and this permit, or otherwise deems the facility or activity an immediate and significant threat to water quality, the Permittee shall provide e-mail notification to cleanwaterbranch@doh.hawaii.gov, Attn: Enforcement Section Supervisor within one (1) week of such determination.”

The rationale behind this request is that DOT-HWYS does not have the authority to establish rules. HRS §342D-2 states, “The director [DOH] may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.” The Environmental Protection Agency (EPA) has acknowledged this limitation. EPA’s *MS4 Permit Improvement Guide* (2010) states, “A major difference between a traditional MS4 and a non-traditional MS4 (such as a DOT, military base, or university) is often the scope of legal authority available to the MS4. Non-traditional MS4 permittees often cannot pass “ordinances” nor do they have enforcement authority like a typical municipality, so legal authority may consist of policies, standards, or specific contract language.”

Furthermore, DOT-HWYS is committed to developing an enforcement policy that ensures the implementation of the NPDES permit and the SWMPP.