

CHAPTER 2

REGULATORY BACKGROUND



Compliance inspection



Chapter 2.0 – Regulatory Background

An NPDES permit is required by the City because of storm water discharge into receiving State water bodies. This requirement is regulated by the Clean Water Act, as amended, (33 U.S.C. 125 1 et. seq.; the "Act"); Hawaii Revised Statutes, Chapter 342D; and Hawaii Administrative Rules, Department of Health (DOH), State of Hawaii, Chapters 11-54 and 11-55.

The storm water management regulatory requirements in the U.S. have evolved over several decades. It had its start with the Federal Water Pollution Control Act (FWPCA) Amendments of 1972. This established NPDES (National Pollutant Discharge Elimination System) permits, pretreatment, and construction grant programs. Significant penalties were established for permit violations. The efforts were aimed at setting effluent limits based on technology and water quality, and provided for State



Manoa Stream receiving waters

regulatory frameworks. The Clean Water Act of 1977 shifted the focus from conventional pollutants to toxic pollutants, but continued the FWPCA focus on industrial and municipal wastewater discharges. The Water Quality Act of 1987 was the first effort to specify storm water permitting requirements. It also established non-point source grant programs and increased the penalties for noncompliance.



The statutory framework for the NPDES program basically requires that all point sources that discharge pollutants in the waters of the United States must obtain an NPDES permit from the Environmental Protection Agency (EPA) or an authorized State (Hawaii is a delegated state). Storm water is regulated under the NPDES program. There has been a phased approach to regulation of storm water. Phase I, in 1990, regulated discharges from medium and large MS4s (Municipal Separate Storm Sewer Systems), industrial activity, and construction sites greater than or equal to 5 acres. Phase II became effective March 10, 2003 and regulated discharges from small MS4s and construction sites from 5 acres to 1 acre. Large, medium, and small MS4s were defined by the size of the population that the system serves. The regulations required the issuance of permits to regulated dischargers.

In Hawaii, small MS4s, industrial facilities, and construction activities greater than or equal to 5 acres are normally covered by general permits. However if such facilities discharge storm water into sensitive water bodies designated as Class AA marine, or Class 1 inland State waters, or areas restricted in accordance with the State's "No

Discharge” policy then those facilities must be covered by an individual permit. Also, small MS4s and industrial facilities could be covered under an individual permit issued to a large MS4.

Regulatory emphasis is placed on pollution prevention by regulating “end of pipe” discharges in lieu of setting effluent limits. Prevention is accomplished through the development and implementation of plans such as the MS4 Storm Water Management Plans (SWMP), Industrial Storm Water Pollution Control Plans (SWPCP), and erosion control plans and site specific BMPs for construction sites.

NPDES permits are federally enforceable, and violators are subject to federal and state enforcement actions and penalties. The potential liability for violations of storm water permitting requirements is large. At the federal level, civil penalties can be \$34,500 per day, per violation. The law also provides for injunctive relief, and criminal fines and imprisonment for knowing and negligent violations. Penalties at the state level vary; in Hawaii civil penalties can be up to \$25,000 per day, per violation.



Containment of chemicals

The City has received an NPDES permit (Permit No. HI S000002) from the State Department of Health (DOH) for a large MS4 for the City and County of Honolulu’s Municipal Separate Storm Sewer System (MS4), Municipal

Building Complex, Kapolei Building Complex, and additional storm sewer outfalls that may be identified from time to time. The City has also received 11 general permits for the Sand Island, Waianae, Wahiawa, and Honouliuli Wastewater Treatment Plants (WWTP); Department of Transportation Services Kalihi-Palama and Pearl City Bus Facilities; and Kalaheo, Waipahu Ash, Waimanalo Gulch, Kalaeloa, and Waianae Landfills. Additionally, the City has received two individual permits for the Kailua WWTP and Kapaa Sanitary Landfills. Other NPDES permit applications for industrial facilities covering the Department of Facilities Maintenance and Division of Refuse’s corporation yards, convenience center, and transfer stations; one general permit for Collection System Maintenance’s Halawa Baseyard; and 5 other NPDES permit applications for City facilities considered as small MS4s for the Department of Enterprise Services (DES), Department of Parks and Recreation, Honolulu Police Department (HPD), Honolulu Fire Department (HFD), and Board of Water Supply (BWS).

The City plans to combine all City facilities requiring an NPDES permit into the permit for the large MS4s. The Department of Environmental Services will have overall responsibility to ensure that each City department complies with the requirements of the permit and provide the appropriate training to the staff on BMP methods and procedures.