

# UNIVERSITY OF HAWAII

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Environmental Center

Office of the Director

## PROPOSED AMENDMENTS TO AIR QUALITY CONTROL REGULATIONS

Statement by  
Doak C. Cox, Director, Environmental Center  
for  
Department of Health Public Hearing  
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This statement on amendments proposed by the Department of Health to Public Health Regulations, Chapter 43 "Air Pollution Control Regulations" has been submitted in draft for review by University faculty members of the Environmental Center Task Force on Air Quality. The statement does not, however, represent an institutional position of the University of Hawaii.

In general the proposed amendments represent desirable improvements in the air pollution control regulations. They would introduce (or fail to remove) some minor inconsistencies or lacks of clarity, and changes are suggested that would result in further improvements. In only one very important respect do the proposed amendments seem inadequate. This is their failure to prescribe that a public hearing should be held to consider any variance provided for in Section 20.

Each of the six proposed amendments is discussed in detail, and in addition it is recommended that the introduction to the proposal of the amendment be considered an amendment to the introduction to Chapter 43.

### Amendment 1. (Sec. 3. "Sampling and Testing Methods")

This amendment provides that those responsible for stationary air pollution sources must monitor their emissions and report to the Department of Health, and that the Department of Health will compare the reports with the emission standards and make the results available to the public. The Department may implicitly have the powers provided by the amendment under previous statutory authority and existing regulations, but their explicit provision is highly desirable. Explicit statutory basis for this amendment was provided in Sec. 22(3), Act 100, SLH 1972, and adoption of an explicit regulation under which to implement this authority was anticipated in Sec. X-3 of the Hawaii Air Quality Implementation Plan. The lack of such explicit regulations is considered by the EPA as a deficiency of the Plan as it now exists.

The proposed amendment is in general appropriate. If and when it is adopted the EPA should be notified and requested to revoke 40 CFR 52.627(b) as no longer needed. Certain minor improvements should, however, be considered:

i) Under proposed Sec. 3(c)(1) the DOH will specify the information to be collected in the monitoring system of an operator. Under Sec. 3(c)(2) the operator will summarize this information and report to the DOH. It may be implicit, but it would be better made explicit, that the DOH will specify the nature of the summaries so as to assume this relation to the air quality standards.

ii) Present subsection Sec. 3(a) deals with sampling and testing methods. At present it is not clear to what sampling Sec. 3(a) applies, and the subsection 3(a) would more logically follow rather than precede the new subsection 3(c).

iii) Subsection 3(b), Sec. 3(b) provides that the DOH may conduct its own sampling. This subsection would more logically either precede or follow all subsections dealing with monitoring requirements made of source operators.

iv) The present title of Sec. 3 is "Sampling and Testing Methods". As amended the section will cover "Monitoring requirements and sampling and testing methods" and the title should be changed accordingly.

Amendment 2. (Sec. 6. "Compliance Schedule")

This amendment provides that the DOH shall set a date by which any emission not conforming with air pollution control regulations is to be brought into compliance through an approved control plan such as is called for by the present regulations, specifies that control plans must be submitted by 31 December 1972, specifies that a control plan shall be approved only if it is in the public interest, allows for revocations of a control plan if revocation is in the public interest, and requires that all sources must be brought into conformity with National Ambient Air Quality Standards by 31 July 1975. The proposed provisions could be held implicit in the present regulations, but the lack of explicit statement is considered by EPA a deficiency of the present Air Pollution Control Implementation Plan, and federal regulations to remedy the defects were adopted.

The proposed amendment is, in general, appropriate. If and when it is adopted the EPA should be notified and requested to revoke 40 CFR 52.626 as no longer necessary. Certain points should, however, be considered:

i) The references in proposed subsection 6(a) to "applicable rules and regulations" are confusing and even misleading. What is intended is specifically the rules and regulations in PHR Chapter 43. Failure of the quality of ambient air to meet the Ambient Air Quality Standards defined in Chapter 42 results from the effects of many air pollution sources including automobiles. The present language of subsection 6(a) would seem to require submittal of an emission control plan and issuance of a compliance order for each automobile, but this is surely not intended. The present language refers to a date specified for compliance, but actually there are several dates for various kinds of emissions. The subsection section could

be improved by rewording somewhat as follows:

- (a) Every existing source shall be in compliance with applicable rules and regulations of this chapter by the date respectively specified for such sources generally; unless the owner or operator shall have received a compliance order which extends the date for the compliance of the specific source.

The same restrictions of applicability to the rules and regulations of Chapter 43 should be made in proposed subsection 6(g).

ii) Proposed subsection 2(b)(2) of Chapter 43 requires that all present statutory sources be registered within 6 months of the effective date of the regulation, in other words by 21 August 1972. This would have been a logical date by which to require the submission of control plans and schedules. The proposed amendment cannot be made retroactive but, considering that the submission of control plans and schedules is required in the present regulation, the allowance of 4 months for this submission seems liberal.

Amendment 3. (Sec. 12. "Fuel Burning Equipment: Bagasse-burning boilers")

The proposed substitution of the compliance date 31 December 1973 for the original 1 March 1974 would eliminate a part of the normal mill shutdown period during the winter of 1973-74 as a time when construction can be undertaken to achieve compliance. However, since there will be no emissions during the shutdown periods, the change in compliance date may have little effect, and if for good reason some mills cannot achieve compliance by the end of 1973 their compliance can be extended by a compliance order.

Amendment 4. (Sec. 20. "Variances")

This amendment provides much more detail than the present regulations as to the conditions under which a variance may be granted, in conformity with SLH 1972, Act 100. In general it is appropriate. However, several points merit discussion:

i) The term variance is used in conformity with the usage in SLH 1972, Act 100, excluding the permission to fail to comply with a standard for the limited period of time that will be provided through a compliance order. So long as the statutory authority restricts the meaning of the term "variance" in this way, and uses the term "permit" to apply to the time-limited sanction of departures from standards, the amendment cannot be improved in this respect. Reference should be made to the Environmental Center review of 1972 SB 1447 and other predecessor drafts to SLH 1972, Act 100 for a discussion of the usage of various forms of sanctions of departures from standards.

ii) It is not clear whether the variances granted under Sec. 20 represent sanctions to departures from requirements of Chapter 43 alone or also the continuance of emissions that result in or contribute to departures from the ambient air quality standards of Chapter 42. The grant of variances for emissions that result in or contribute to departures from Natural Ambient Air Quality Standards is prohibited under subsection 20(f) but

effects on air quality standards otherwise are mentioned only in subsection 20(b) in connection with information required in an application for a variance. That subsection refers only to "air quality standards established pursuant to this Chapter [43]" whereas the ambient air quality standards are contained in Chapter 42. The importance of clarification can be shown by an example. An exception to the non-degradation provision of Sec. 2.3 Chapter 42 is permitted if "it has been affirmatively demonstrated to the Director of the Department of Health that a lowering of the quality of the ambient air in an area is justified as a result of necessary economic or social development . . ." etc. Any new development in a now undeveloped area is likely to result in ambient air quality degradation. Hence a variance to the non-degradation provision may be appropriate, and necessary if the development is to proceed. Section 2(a)(1), Chapter 43 requires that a new source of air pollution such as this development will be covered by a permit, but Sec. 2(a)(5)(a) 3) disallows a permit if the maintenance of ambient air quality standards is endangered. Hence the new development will require variance with respect to Sec. 2.3 of Chapter 42 and to Sec. 2(a)(5)(a) of Chapter 43.

iii) Although, unfortunately not required by SLH 1972, Act 100, so important an exception to normal standards as a variance, valid for a period as long as 10 years and renewable, should not be granted without a public hearing. Public hearings are required by PHR Chapter 37-A for those variances to water quality standards that are termed "Zones of Mixing". It is strongly recommended that provision for a public hearing be added to the proposed amendment of Sec. 20.

Amendment 5. (Sec. 21. "Penalties")

This amendment is proposed to make the penalty provision conform to SLH 1972, Act 100. The change is appropriate.

Amendment 6. (Sec. 22. "Hearings and Appeals")

This amendment is proposed in recognition that the original statutory provision in SLH 1957, Act 60 (better referred to as RLH Chapter 322) has been replaced by SLH 1972, Act 100. The change is appropriate.

Additional amendment.

The present introduction to PHR Chapter 43 indicates its primary statutory basis on HRS Sec. 322-62. The introduction to the proposed amendments indicates their primary basis on HRL Chapters 91 and 322, SLH 1972, Act 100, and PL 91-604. Since the entire portion of HRL Chapter 322 dealing with air pollution, Part V, has been replaced by SLH 1972, Act 100, the statutory basis of PHR Chapter 43 should be amended, in its introduction, to the acts listed in the amendment, less HRS Chapter 322.