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DEPARTMENT OF PUBLIC WORKS
CITY AND COUNTY OF HONOLULU

ADOPTION OF

Rules of the Engineering Division for Drainage, Flood and Pollution Control,
and Grading, Soil Erosion and Sediment Control Programs

September 16, 19 94

SUMMARY

Rules of the Engineering Division for Drainage, Flood and Pollution Control and
Grading, Soil Erosion and Sediment Control Programs are adopted.

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"DEPARTMENT OF PUBLIC WORKS
CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

Chapter 1, Rules of the Engineering Division
Part I - Drainage, Flood and Pollution Control and
Grading, Soil Erosion and Sediment Control Programs

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CHAPTER 1

RULES OF THE ENGINEERING DIVISION

PART 1 - DRAINAGE, FLOOD AND POLLUTION CONTROL AND
GRADING, SOIL EROSION AND SEDIMENT CONTROL PROGRAMS

SUBCHAPTER 1

GENERAL PROVISIONS

§00-01-01 Purpose of Subchapter; Statement of Policy. The purpose of this chapter is to establish procedures on the implementation and enforcement of permits issued by the department for drainage, flood, pollution control; grading, soil erosion and sediment control programs; and provisions for the public and others the opportunity for participation.

[Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-13.1, ROH §14-13.2, ROH § 14-16.1, ROH §14-16.6, 33 USC § 1342, 40 CFR § 122.26, Am. Ord. 92-122] (Imp: 40 CFR § 122.26, Am. Ord. 92-122)

§00-01-02 Delegation of Authority. The Chief Engineer may delegate to personnel within the department authority regarding the department's responsibilities in accordance with this chapter. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH §14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

§00-01-03 Definitions. As used in this Chapter:

“Action of the Chief Engineer” means a decision rendered on an enforcement order or a permit pursuant to the Drainage, Flood and Pollution Control Ordinance, Chapter 14, Article 12, or the Grading, Soil Erosion and Sediment Control Ordinance, Chapter 14, Articles 13 through 16, Revised Ordinances of Honolulu 1990, as amended (hereinafter “Drainage, Flood and Pollution Control Ordinance” and “Grading, Soil Erosion and Sediment Control Ordinance”).

“Chief Engineer” means the Director and Chief Engineer, Department of Public Works, City and County of Honolulu, or his duly authorized agent.

“Days” means calendar days, unless indicated otherwise.

“Department” means the Department of Public Works, City and County of Honolulu.

“Effective Date of Order” means the date upon which an Order has been signed by the Engineer as indicated in said Order.

“Hearing” means a proceeding for the determination of the legal rights of specific parties which is authorized by law or rules in a manner which is initiated by action taken or to be taken by the department.

“Hearings Officer” means the person who hears and decides an appeal of the Chief Engineer’s decision. This person may be the Chief Engineer or a designated representative.

“Intervenor” means a person or agency who is admitted as a party in any proceeding before the Chief Engineer.

“Order” means the Findings of Fact, Conclusions of Law, and Decision and Order of the Hearings Officer.

“Party” means each person or agency properly seeking and entitled to be admitted as a party in a hearing; the Chief Engineer; and any intervenor who has complied with Section 00-01-15 and has been admitted by the Hearings Officer as a party to the hearing.

“Public hearing” means a proceeding at which testimony of interested persons is received. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 33 USC § 1342, 40 CFR § 122.26, Am. Ord. 92-122] (Imp: Am. Ord. 92-122)

§00-01-04 Mailing Address. The mailing address of the Chief Engineer, Department of Public Works, and Hearings Officer is:

c/o Department of Public Works
City and County of Honolulu
650 South King Street, 11th Floor
Honolulu, Hawaii 96813

[Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

§00-01-05 Requests for Information. Requests for information, in person, by messenger, or by telephone, may be made during business hours or by submitting a request for information in writing to the Chief Engineer, Department of Public Works, 650 South King Street, Honolulu, Hawaii 96813. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH §14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

§00-01-06 Records. The public may obtain information as to matters within the jurisdiction of the Department of Public Works by inquiring at:

- (1) The Office of the City Clerk, City Hall, where the official file of these rules are kept.
- (2) The Department of Public Works, Division of Engineering, 15th floor, 650 South King Street, Honolulu, Hawaii 96813. Copies of public records of the Department of Public Works are available upon payment of the fees established by the City Council.

In accordance with applicable laws, files are public records and may be examined upon request. These files include files on cases brought before the Department of Public Works and these rules. Case files include permits, Chief Engineer's reports, correspondence, maps and drawings, written testimony, tape recordings of the proceedings, and all other

pertinent documents. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

§00-01-07 Communications. There shall be no communication by any person with the Hearings Officer on a matter that is currently before said Hearings Officer except where all parties are given an opportunity to participate. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

§00-01-08 Computation of Time. Whenever the Rules of Procedure specify a period of days for a particular action to be taken, it shall be calendar days. The action shall be completed by 4:30 p.m. on the last day of the specified period. However, when the specified period of days ends on a public holiday or weekend day, the action shall be completed by 4:30 p.m. of the next business day. The date the action is ordered or otherwise initiated shall not be counted in the number of days. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

SUBCHAPTER 2

PETITION FOR ADOPTION, AMENDMENT, OR REPEAL OF RULES OF PROCEDURE

§00-01-09 Petition. Any interested person may petition the Chief Engineer to adopt, amend, or repeal any rules of the Department. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

§00-01-10 Submission. A written petition shall be submitted to the Chief Engineer, Department of Public Works, 11th floor, 650 South King Street, Honolulu, Hawaii 96813. It shall include:

- (1) The name, address, and telephone number of the petitioner.
- (2) A statement of the nature of the petitioner's interest.
- (3) A draft of the proposed rule or amendment or a designation of the provision sought to be repealed.
- (4) A detailed statement explaining the basis for the petitioner's support for a proposed rule, amendment, or repeal. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

§00-01-11 Disposition of Petition. The Chief Engineer shall within thirty days after the submission of the petition either deny the petition in writing stating the reasons for such denial, or shall initiate proceedings in accordance with Section 91-3, Hawaii Revised Statutes, as amended, to adopt, amend, or repeal the rule. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 40 CFR § 122.26] (Imp: Am. Ord. 92-122)

SUBCHAPTER 3

PROCEDURE FOR APPEAL FROM ACTION

OF THE CHIEF ENGINEER

§00-01-12 Petition. (a) Any person who is specially, personally and adversely affected by an action of the Chief Engineer may submit a written petition to the Department of Public Works setting forth.

- (1) The petitioner's name, mailing address, and telephone number.
- (2) Identification of the location of the violation or discharge by street address.
- (3) The petitioner's interest in the property or if the petitioner has no property interest, state how the petitioner is adversely affected by the action appealed.
- (4) Designation of the specific applicable provision of the ordinance or rule or regulation.
- (5) The action of the Chief Engineer and the date said action was taken.
- (6) All pertinent facts.

(7) Reasons for the appeal, including a statement as to why the petitioner believes that the Chief Engineer's action was based on an erroneous finding of a material fact, and/or that the Chief Engineer acted in an arbitrary or capricious manner, or manifestly abused his or her discretion.

(b) Failure to comply with any provision of Section 00-01-12(a) above shall constitute grounds for dismissal of the appeal by the department. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, Am. Ord. 92-122] (Imp: Am. Ord. 92-122)

§00-01-13 Withdrawal of Petition. A written request from the petitioner to withdraw a petition shall be approved by the Hearings Officer if the request is made with the written concurrence of all parties to the proceeding and is received at such time that newspaper publication of the notice of public hearing may be halted. In all other instances, the request for withdrawal shall be considered by the Hearings Officer, which may approve or deny the request. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, Am. Ord. 92-122] (Imp: Am. Ord. 92-122)

§00-01-14 Pre-Hearing Procedure. (a) Within ten days after receipt of a petition, the department shall forward copies of the petition to all interested parties, if any, if they are not the petitioner.

(b) The department shall, upon consultation with the parties, set the date for the hearing on the appeal and the public hearing, and if written briefs are to be submitted, schedule the dates on which are due the opening brief, answering brief, and reply brief. No

brief shall be scheduled for or submitted on a date less than seven days prior to the scheduled hearing date. Failure of any party to timely submit a brief shall be grounds for the department, upon its own motion or the motion of any party, to order such brief stricken from the record.

(c) Motions to the Hearings Officer and supporting, opposing, and reply memoranda may be submitted by the parties as they deem appropriate, except that the Hearings Officer will not accept any motion or memorandum submitted less than seven days prior to the scheduled hearing date for the appeal.

(d) All parties shall provide an original and six copies of each document submitted to the department for filing and it shall be the responsibility of such party to provide copies of such documents to all parties to the appeal and to file a certification with the department attesting to the transmittal of the document, setting forth therein the name of the document, the date of transmittal, the manner of delivery, and the name and address to which the document was transmitted.

(e) Any witness subpoena requests shall be filed together with the briefs.

[Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

§00-01-15 Intervention. (a) The Hearings Officer shall consider and act upon applications to intervene.

(b) The Hearings Officer will not accept any application submitted after the date on which the petitioner's opening brief is due, if such date has been scheduled, or 30 days prior to the scheduled hearing date for the appeal, whichever first occurs.

(c) Applications to intervene shall be disposed of as follows:

(1) Intervention shall be granted to an applicant who demonstrates that such applicant will be so directly and immediately affected by an adverse decision that such applicant's interest in the proceeding is clearly distinguishable from that of the general public.

(2) Intervention may be denied in the sound discretion of the Hearings Officer when it appears that the position of the applicant is substantially the same as that of a party already admitted to the proceeding. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

§00-01-16 Waiver or Suspension of Rules. For good cause shown, the Hearings Officer may waive or suspend any procedure in Subchapter 3. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

SUBCHAPTER 4

HEARING

§00-01-17 Procedure. (a) The hearing shall be conducted in conformity with the applicable provisions of Sections 91-9, 91-10, and 91-11, Hawaii Revised Statutes.

(b) The hearings before the Hearings Officer shall be open to the public in accordance with the provisions of Chapter 91, Hawaii Revised Statutes.

(c) The hearings shall be conducted as a contested case under Chapter 91, Hawaii Revised Statutes, as it may be amended.

(d) Notice of the hearings shall be published once in a newspaper with general circulation at least ten days prior to the date of the hearing.

(e) The department shall provide written notice of the hearing on an appeal to all parties to the appeal by regular mail or delivery, in accordance with the provisions of Section 91-9, Hawaii Revised Statutes.

(f) All persons interested in an appeal pending before the Hearings Officer shall be afforded an opportunity to present oral testimony at the public hearing on the appeal except that in the interest of the efficiency and manageability of the hearing, the Hearings Officer may limit the duration of each person's testimony to three minutes. Written testimony may be submitted in lieu of oral testimony but, in such event, must be submitted no less than

seven days prior to the public hearing date scheduled for the appeal. Written testimony may be submitted with oral testimony at the public hearing.

(g) Any party to an appeal shall be permitted to cross-examine any person presenting oral testimony at the public hearing for the appeal and shall be permitted to controvert the oral and written testimony presented to or received by the Hearings Officer. Written testimony may be received at the discretion of the Hearings Officer over the objection made by any party to the appeal.

(h) At the hearing, parties shall be entitled to call witnesses, to cross-examine witnesses, and to make legal arguments.

(i) The Hearings Officer shall have the power to exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The tape recordings of the proceeding shall be transcribed only upon request of the Hearings Officer or upon appeal of the decision of the Hearings Officer. Any party may, with the prior consent of the Hearings Officer, arrange for services of a recording stenographer to prepare a transcript at the expense of and for the use of such party.

(k) If a visit to the site is made by the Hearings Officer, all parties shall be given ten days prior notice and may be present and participate. Minutes shall be kept.

[Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

§00-01-18 Decision. If, after a hearing, the Hearings Officer finds that a violation or violations have occurred, the Chief Engineer shall affirm or modify the order previously issued or issue an appropriate order. If, after a hearing, the Hearings Officer finds that no violation has occurred or is occurring, the Chief Engineer shall rescind the order. If the Hearings Officer finds that the permit should be modified, suspended, or revoked pursuant to the Drainage, Flood and Pollution Control Ordinance or the Grading, Soil Erosion and Sediment Control Ordinance, the Chief Engineer shall take the appropriate action regarding said permit in accordance with said Ordinances. [EFFECT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

§00-01-19 Order. (a) The party prevailing in the appeal shall prepare a proposed Order which shall set forth in separately numbered paragraphs the findings of fact and conclusion of law material to the decision. The proposed Order shall be filed with the Hearings Officer no later than thirty days after the announcement of the decision. Any party objecting to the proposed Order shall present such objections in writing to the Hearings Officer no later than fifteen days after receipt of the proposed Order.

(b) The Hearings Officer shall consider and approve the proposed Order within sixty days of the announcement of the decision unless otherwise agreed upon by the parties. Parties who have submitted written objections to the proposed Order shall be permitted at that time to argue said objections, and the party proposing the Order shall be permitted to respond to the objections.

(c) Following the Hearings Officer's approval of the Order, a certified copy of the Order shall promptly be transmitted to all the parties by delivery or regular mail.

[Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

§00-01-20 Reconsideration. Any party may request reconsideration of the Hearings Officer's decision provided such request is in writing, sets forth the basis therefor, and is filed with the Hearings Officer no later than 30 days after adoption of the Order. The Hearings Officer may grant reconsideration of a written or oral decision on all or some of the issues for good cause shown. Reconsideration of a decision shall be limited to the evidence previously adduced before the Hearings Officer. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

§00-01-21 Court Remand. (a) In the event a court orders an appeal remanded to the department for action, the Hearings Officer shall hold a public hearing within sixty days of the date of the remand.

(b) The court record and the prior record on the appeal before the Hearings Officer shall be incorporated into the record of the proceeding on remand.

(c) The Hearings Officer shall determine the scope and limit of evidence and testimony to be considered at the hearing in accordance with the terms of the court remand.

(d) Notice of the hearing shall be given to all parties as provided in Section 00-01-17. The notice shall also include a statement of any limits to be placed on evidence and testimony.

(e) The proceeding will be conducted consistent with Section 00-01-17.
[Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

SUBCHAPTER 5

JURISDICTION

§00-01-22 Appeal Deadline. (a) A written petition appealing an action of the Chief Engineer must be received at the department within thirty days of the date of the mailing or personal service of the Chief Engineer's written decision.

(b) If the appeal is not timely filed, it shall be dismissed by the Hearings Officer or at the motion of any party to the proceeding. [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6] (Imp: Am. Ord. 92-122)

SUBCHAPTER 6

CIVIL PENALTIES

§00-01-23 Violation of the Drainage, Flood and Pollution Control Ordinance. A person, group of persons, firm or corporation responsible for the violation of the Drainage, Flood and Pollution Control Ordinance provided in Chapter 14, Article 12 of the Revised

Ordinances of Honolulu 1990, as amended, may be liable for paying the City and County a civil fine in the amount prescribed by the following schedule: [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-16.6, 33 USC § 1342, 40 CFR § 122.26, Am. Ord. 92-122] (Imp: 40 CFR § 122.26, Am. Ord. 92-122)

§00-01-24 Violation of the Grading, Soil Erosion and Sediment Control Ordinance. A person, group of persons, firm or corporation responsible for the violation of the Grading, Soil Erosion and Sediment Control Ordinance provided in Chapter 14, Articles 13 through 16 of the Revised Ordinances of Honolulu 1990, as amended, may be liable for paying the City and County a civil fine in the amount prescribed by the following schedule: [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-13.1, ROH §14-13.2, ROH §14-16.1, ROH § 14-16.6, Am. Ord. 92-122] (Imp: ROH § 14-16.4)

§00-01-25 Other Remedies. The civil fines set forth herein are in addition to any other remedies and injunctive relief provided by law." [Eff OCT - 6 1994] [Auth: RCH § 6-403, ROH § 14-13.1, ROH §14-13.2, ROH §14-16.1, ROH § 14-16.6, 33 USC § 1342, 40 CFR § 122.26, Am. Ord. 92-122] (Imp: 33 USC § 1342, 40 CFR § 122.26, Am. Ord. 92-122)

VIOLATIONS AND PENALTIES

DRAINAGE, FLOOD AND POLLUTION CONTROL ORDINANCE

Violation	Amount of Initial Fines	No. of Days after Notice of Order before Daily Fines are Assessed	Amount of Daily Fines
Connection to the city-owned separate storm sewer system without a license	\$1,000	30	\$1,000
Discharging storm water associated with industrial activity including construction activity, 5-acre or more, into the city-owned separate storm sewer system without an NPDES permit	\$2,000	10	\$2,000
Discharging effluent (nonstorm water) into the city-owned separate storm sewer system without a permit.			
Construction dewatering	\$2,000	10	\$2,000
Hydrotesting water	3,000	10	3,000
Noncontact cooling water	1,000	10	1,000
Treated effluent from leaking underground storage tank	5,000	10	5,000
All other effluent	1,000	10	1,000

Violation	Amount of Initial Fines	No. of Days after Notice of Order before Daily Fines are Assessed	Amount of Daily Fines
<p>Discharging effluent (nonstorm water) into the city-owned separate storm sewer system without an NPDES permit</p> <p>Construction dewatering</p> <p>Hydrotesting water</p> <p>Noncontact cooling water</p> <p>Treated effluent from leaking underground storage tank</p> <p>All other effluent</p>	<p>up to \$ 5,000</p> <p>up to 5,000</p> <p>up to 5,000</p> <p>up to 10,000</p> <p>up to 5,000</p>	<p>10</p> <p>10</p> <p>10</p> <p>10</p> <p>10</p>	<p>up to \$ 5,000</p> <p>up to 5,000</p> <p>up to 5,000</p> <p>up to 10,000</p> <p>up to 5,000</p>
<p>Discharging any pollutants into the City-owned separate storm sewer system which causes a pollution problem in state waters or causes a violation of any provision of the city NPDES permit or the water quality standards of the State of Hawaii</p>	<p>Not less than \$1,000 or more than \$25,000</p>	<p>5</p>	<p>Not less than \$1,000 or more than \$25,000</p>

Violation	Amount of Initial Fines	No. of Days after Notice of Order before Daily Fines are Assessed	Amount of Daily Fines
Discharging any pollutant into any City-owned separate storm sewer system			
Domestic wastewater	up to \$10,000	10	up to \$10,000
Industrial wastewater	up to 25,000	10	up to 25,000
Hazardous substances listed in 40 CFR 302.4 and 117 including reportable quantities			
Less than reportable quantity	up to 10,000	5	up to 10,000
Reportable quantity	up to 25,000	5	up to 25,000
Fuel oils	5,000	5	5,000
Rock, sand, and soil sediment	2,000	5	2,000
All other pollutants	1,000	5	1,000
Second stop discharge order (recurring violation)	Double of previous fine up to \$25,000	10	Double of previous fine up to \$25,000

VIOLATIONS AND PENALTIES

GRADING, SOIL EROSION AND SEDIMENT CONTROL ORDINANCE

Violation	Amount of Initial Fines	No. of Days after Notice of Order before Daily Fines are Assessed	Amount of Daily Fines
GRADING/STOCKPILING without a permit or authorized by the permit up to 100 cy 101 - 300 cy 301 - 600 cy 601 - 1,000 cy 1,001 - 2,000 cy 2,001 - 5,000 cy 5,001 - and over Second stop work order (recurring violation)	\$ 50 100 150 250 500 750 1,000 Double of Previous Fine up to \$1,000	30 30 30 30 30 30 30 10	\$ 50 100 150 250 500 750 1,000 Double of Previous Fine up to \$1,000
GRUBBING without a permit or authorized by the permit 0 - 15,000 sf (0.34 acres) 0.35 - 1.0 acres 1.01 - 3.0 acres 3.01 - 5.0 acres 5.01 - 15.0 acres 15.01 and over	\$ 25 50 100 200 500 1,000	30 30 30 30 30 30	\$ 15 25 50 100 250 500
Failure to implement any provision of the approved drainage and erosion control plan	\$1,000	10	\$1,000

DEPARTMENT OF PUBLIC WORKS
CITY AND COUNTY OF HONOLULU

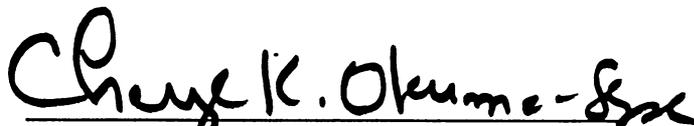
The Rules of the Engineering Division for Drainage, Flood and Pollution Control and Grading, Soil Erosion and Sediment Control Programs dated September 16, 1994 were adopted on September 16, 1994, following one public hearing held on August 30, 1994, after public notice was given in the the Honolulu Star-Bulletin on July 28, 1994.

Administrative Rules Relating to Civil Penalties for Failure to Comply With the Grading, Soil Erosion and Sediment Control Code is hereby repealed.

The adoption of these Rules shall take effect ten days after filing with the office of the City Clerk, City and County of Honolulu.


KENNETH E. SPRAGUE
Director and Chief Engineer
City and County of Honolulu

APPROVED AS TO FORM


Deputy Corporation Counsel

Dated: SEP 16 1994

APPROVED:


JEREMY HARRIS
Acting Mayor
City and County of Honolulu

Dated: September 26, 1994

FILED:


RAYMOND K. PUA
City Clerk
City and County of Honolulu