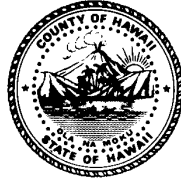


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County of Hawai'i

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Public hearings: April 10 – 5:30 p.m. – Aupuni Center Conference Room and Zoom
 April 11 – 5:30 p.m. – West Hawai'i Civic Center and Zoom

Proposed Amendments to the Administrative Rules of Practice and Procedure of the Department of Environmental Management.

These rules shall become effective 10 days after approval.

Material to be deleted is bracketed and stricken. Material to be added is underscored.

The Department will fully consider all written and oral submissions respecting the proposed rule.

The agency may make its decision at the last scheduled hearing or announce at the hearing the date when it intends to make its decision.

All rules are subject to renumbering.

1. Article II, Rule 5-3 of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended to insert new definitions to read as follows:

“Commercial vehicle” means any type of motor vehicle used for transporting goods or paying passengers.

“Feral animal” means animals that have changed from being domesticated to being wild, natural, or untamed. This includes but is not limited to dogs, cats, pigs, goats, and chickens.

“Sanitary landfill disposal fees,” also known as “tipping fees” or “gate fees,” means the fee paid to dispose of waste in a landfill. This fee pays for the cost of using and operating the landfill and administrative costs.

2. Article II, Rule 6 of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended by amending paragraph (g) of Rule 6-1 to read as follows:

“6-1. Requirements.

- (a) No business, government agency, religious entity or nonprofit organization shall dispose of solid waste at any sanitary landfill or reload facility without first obtaining a disposal permit issued by the director and making payment of the permit fee as required herein.
- (b) Application. An application for a disposal permit shall be submitted to the director on a form furnished by the department. Incomplete applications shall not be considered by the director.
 - (1) The following information is required on the application:
 - (A) Name, mailing and street address, telephone number and e-mail address (if available) of the business, government agency, religious entity or nonprofit organization.
 - (B) Make, model, tare weight, carrying capacity in cubic yards and license number of the vehicle(s) which would be used to dispose of solid waste.
 - (C) Approximate volume and frequency of solid waste to be disposed.
 - (D) Origin and type of solid waste to be disposed.
 - (E) Other information as deemed necessary by the director.
 - (2) Persons not acting as or on behalf of any business, government agency, religious entity or nonprofit organization shall provide their name, residence and mailing address, and e-mail address (if available), residence and employer telephone numbers, driver’s license number, and any other information deemed necessary by the director for billing, collection and monitoring purposes.
- (c) Duration. The disposal permit shall be effective for a period of one (1) year from the date of issuance.
- (d) Compliance. The director may suspend or revoke a disposal permit for the following reasons:

- (1) Failure to pay disposal charges or special handling fees when due.
 - (2) Failure to comply with the provisions of these rules.
 - (3) Failure to comply with disposal procedures and/or conditions established by the department.
 - (4) Altering a permit or falsifying any information submitted to the department.
 - (5) Failure to comply with Sanitary Landfill Operating Rules and Reload Facility Operating Rules.
- (e) Permit holder may dispute the director's findings by requesting a hearing pursuant to Chapter 20, HCC.
- (f) Any person who is found within a sanitary landfill or reload facility attempting to continue business with a suspended or revoked permit shall be deemed to be a trespasser and subject to prosecution, pursuant to Chapter 20, HCC.
- (g) Permit Fee. There shall be a fee of [~~\$25~~] \$50 for the issuance of a solid waste disposal permit to a business, government agency, religious entity or nonprofit organization, payable with the application. [~~The permit grants access into the SWD facility and nothing more.~~] There shall be no fee for the issuance of a permit to persons not acting as or on behalf of a business, government agency, religious entity or nonprofit organization. The permit grants access into the SWD facility and nothing more."

3. Article II, Rule 9 of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended by amending Rule 9-19 to read as follows:

~~“9-19. The maximum greenwaste load size [which is placed into a SWD greenwaste container or area shall be 5 cubic yards or less. Only]~~ shall not exceed 5 cubic yards. Except for palm fronds, no greenwaste items, including logs and branches, shall exceed 3 feet in length or 1 foot in diameter. Not more than one load per day shall be allowed unless approved in advance by the director.

Article II, Rule 10 of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended by repealing section 10-2 and renumbering remaining sections appropriately:

~~[10-2. All greenwaste, including logs and branches but excluding palm fronds, shall be 5 feet or less in length and 18 inches or less in diameter.]~~

4. Article II, Rule 9 of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended by amending Rule 9-19 to read as follows:

“9-23. Use of handheld devices while operating a vehicle is prohibited. Making phone calls ~~and~~ or sending text messages or emails while driving is prohibited. Completing paperwork or any other type of task that would distract the driver from operating the vehicle is also prohibited.”

5. Article II, Rule 9 of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended by adding a new section to read as follows:

“9- . To prevent interference with SWD operations, collisions with vehicles, and potential disease transmission, the feeding of feral animals is discouraged.”

6. Article II, Rule 12-3 of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended to read as follows:

“12-3. Fee Schedule. Fees for solid waste disposal into SWD facilities are established as follows:

- (1) Sanitary landfill disposal fees.

- (A) Rate by weight: Dollars per ton prorated accordingly.

Year beginning on July 1 of each calendar year.				
[2018] <u>2022</u>	[2019] <u>2023</u>	[2020]	[2021]	[2022]
[\$108] <u>\$116</u>	[\$110] <u>\$124</u>	[\$112]	[\$114]	[\$116]

~~[Beginning in 2023, the]~~ In subsequent years the disposal fees will increase at a minimum in accordance with the fourth quarter of the calendar year prior to the coming fiscal year of the Honolulu consumer price index.

- (B) When and if it is impossible or impractical due to power outage, disaster, or other emergency to determine an accurate weight, rates by vehicle size and volume shall be used:

TYPE I: Light trucks or other vehicles with a gross vehicle weight of less than 10,000 pounds with no more than three cubic yards of solid waste charged as dollars per truck.

Year beginning on July 1 of each calendar year.				
[2018] <u>2022</u>	[2019] <u>2023</u>	[2020]	[2021]	[2022]
[\$65] <u>\$70</u>	[\$66] <u>\$75</u>	[\$67]	[\$68]	[\$70]

TYPE II: Medium trucks or other vehicles with a gross vehicle weight from 10,000 pounds to 19,999 pounds with no more than six cubic yards of solid waste charged as dollars per truck.

Year beginning on July 1 of each calendar year.				
[2018] <u>2022</u>	[2019] <u>2023</u>	[2020]	[2021]	[2022]
[\$109] <u>\$117</u>	[\$111] <u>\$125</u>	[\$113]	[\$115]	[\$117]

TYPE III: Large trucks or other vehicles with a gross vehicle weight from 20,000 pounds to 25,999 pounds with no more than nine cubic yards of solid waste charged as dollars per truck.

Year beginning on July 1 of each calendar year.				
[2018] <u>2022</u>	[2019] <u>2023</u>	[2020]	[2021]	[2022]
[\$194] <u>\$209</u>	[\$198] <u>\$223</u>	[\$202]	[\$205]	[\$209]

TYPE IV: All other trucks or vehicles with a gross vehicle weight of 26,000 pounds including commercial solid waste hauling trucks or all other vehicles not qualifying as a Type I, II, or III:

1. Compacted. Dollars per cubic yard.

Year beginning on July 1 of each calendar year.				
[2018] <u>2022</u>	[2019] <u>2023</u>	[2020]	[2021]	[2022]
[\$36] <u>\$38</u>	[\$36] <u>\$41</u>	[\$37]	[\$38]	[\$38]

2. Not compacted. Dollars per cubic yard.

Year beginning on July 1 of each calendar year.				
[2018] <u>2022</u>	[2019] <u>2023</u>	[2020]	[2021]	[2022]
[\$22] <u>\$23</u>	[\$22] <u>\$25</u>	[\$22]	[\$23]	[\$23]

(C) Special handling: Shall be twice the amount per ton listed in (1)(A) above.

(D) Residential credit: Commercial haulers of residential waste shall be eligible for a partial credit for each single-family household from which the hauler collects refuse, provided the hauler’s account is current. The annual credit shall be equal to the landfill disposal fee multiplied by one and one-half tons per year per single-family household. An additional credit for the (1)(E) Reload Facility Disposal Fee equal to the amount charged for one and one half-tons per year per single-family household may also be claimed. The total residential credit shall not exceed the total landfill tipping fees charged to the residential hauler for the month for which the credit is being claimed. Commercial haulers who claim this credit shall provide documentation to the solid waste division including customer name, mailing address, and service address for each credit

claimed. Claims for the residential credit must be submitted on or before the last day of the month following the month for which the credit is being claimed and the hauler’s account must be current for the credit to be applied. Names, mailing addresses, and service addresses of customers of residential haulers are subject to the disclosure limitations in section 92F, Hawai’i Revised Statutes, as disclosure would cause substantial harm to the competitive position of the person from whom the information was obtained.

(E) Reload Facility Disposal Fee: A Reload Facility Disposal Fee of \$25 per ton shall be charged for each commercial load delivered to a Reload Facility. This fee is in addition to the disposal fees in (1)(A) above and is for costs related to SWD handling and hauling of commercial refuse from a Reload Facility to a Sanitary Landfill. This fee shall not be assessed on a commercial load that bypasses a Reload Facility and is deposited at a landfill. The fee shall be effective July 1, 2023, and will be subject to periodic review.

- (2) Lost item fee: If SWD personnel are able to search ~~[and recover]~~ for a customer’s lost item within an hour of arrival at the landfill, the fee will be ~~[actual cost of the use of the equipment and the SWD personnel hourly wage, plus twice the sanitary landfill disposal fee]~~ calculated for the total time SWD personnel removes a trailer from a station, delivers the trailer to the landfill for item recovery, and returns the trailer to the station from which it originated.

<u>Lost Item Fee for first hour</u>
<u>\$500</u>
<u>Additional Lost Item Fee for the second and third hour</u>
<u>\$250 per hour (Maximum search time 3 hours)</u>

Customers wishing to retrieve a lost item will be responsible for the full cost as noted in this table, not to exceed a maximum of 3 hours, of the scheduled fees.

- (3) Greenwaste and organics facility fee.
- (A) All clean greenwaste and acceptable organics must be delivered to a permitted County greenwaste and organics facility.
- (B) The greenwaste and organics disposal fee is set at 25% of the sanitary landfill disposal fee as described in section 12-3(1)(A) above.
- (C) The greenwaste and organics disposal fee is set at 65% of the landfill disposal fee as described in section 12-3(1)(B) above at a County

greenwaste and organics facility without scales. These facilities are able to accept Type I and Type II trucks only.

- (D) Greenwaste and organics must be separated from other solid waste in order to qualify for the reduced greenwaste and organics disposal fee.
 - (E) The greenwaste and organics disposal fee may be suspended by the director if the greenwaste and organics facilities are not operating.
- (4) Additional fee. In addition to the above fees, an additional fee of twenty-five dollars (\$25) shall be assessed for all unsecured loads at the sanitary landfill, reload station, and organics facilities.”

7. Article II, Rule 13-2 of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended to read as follows:

“13-2. Removal of Derelict or Abandoned Vehicle.

- (a) A responsible government enforcement agency shall attach a notice to the reported vehicle, requiring the owner to remove the vehicle within 24 hours.
- (b) A report is initiated for vehicles not removed within 24 hours.
- (c) The report shall be considered closed for any vehicle that ~~[is removed]~~ has been moved beyond the required minimum distance under Section 20-07-01 of the Hawai‘i County Code within 24 hours from the reported location when the County contractor arrives to tow the vehicle.
- (d) Vehicles identified as derelict pursuant to section 290-8, HRS, shall be immediately hauled to the vehicle processing facility or to the impound facility, as determined by the department.
- (e) Abandoned vehicles are towed to the impound facility and the legal and registered owner of the vehicle will be sent written notice by certified mail to last address on record at the vehicle registration and licensing division of the finance department.
- (f) Towing, storage, and administration fee: The registered owner shall pay for the actual cost of towing, plus an administration fee of \$50 or as determined by the director. In addition, the registered owner shall pay for the storage of any impounded vehicle at a charge of \$10 per day from the date of the tow or as determined by the director.
- (g) Only the legal or registered owner may claim an impounded vehicle or property within the impounded vehicle upon payment of all fees incurred or at the discretion of the director.
- (h) All unclaimed abandoned vehicles shall be disposed of, or sold at, public auction.
- (i) There is established a vehicle disposal assistance program to assist Hawai‘i County residents with disposal of vehicles. Assistance shall be contingent on the availability of funds within the County’s vehicle disposal fund, and at the discretion of the director.

- a. To apply for assistance, a property owner or registered vehicle owner shall apply to the department to have the department dispose of a vehicle from the property owner or registered vehicle owner’s property.
- b. The property owner shall ensure that the vehicle is located within 20 feet of the nearest roadway and is accessible to be towed.”

8. Article II of the Administrative Rules of Practice and Procedure of the Department of Environmental Management of March 1, 2022, is amended by inserting a new Rule to be appropriately numbered and to read as follows:

“RULE _ Prohibition of Non-Mineral Sunscreen.

-1. Definitions. Unless otherwise stated, the following terms shall have the meanings provided below for the Department of Environmental Management:

“Sunscreen,” “licensed healthcare provider,” and “prescription” mean the same as defined in section 342D-21, Hawai‘i Revised Statutes.

“Non-mineral sunscreen” means any sunscreen that uses an active ingredient other than titanium dioxide and zinc oxide.

“Titanium dioxide” means the chemical titanium (IV) oxide under the International Union of Pure and Applied Chemistry chemical nomenclature registry, has a chemical abstract service registry number 13463-67-7, and whose synonyms include TiO₂, titania, rutile, anatase, brookite, akaogiite, titanium white, Pigment White 6 (PW6), Colour Index (CI) 77891, oxido de titanio (IV), and titandioxid, and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from four hundred nanometers to two hundred twenty nanometers in an epidermal sunscreen-protection personal care product.

“Zinc oxide” means the chemical oxozinc under the International Union of Pure and Applied Chemistry chemical nomenclature registry, has a chemical abstract service registry number 1314- 13- 2, and whose synonyms include ZnO, zinc white, calamine, Chinese White, flowers of zinc, and zinc oxide, and is intended to be used as protection against ultraviolet light radiation with a spectrum wavelength from four hundred nanometers to two hundred twenty nanometers in an epidermal sunscreen-protection personal-care product.

-2. Prohibition. It is unlawful to sell, offer for sale, or distribute for sale any non-mineral sunscreen without a prescription issued by a licensed healthcare provider.

-3. Exceptions. This article shall not apply to the sale, distribution, or offer of sale of sunscreens banned pursuant to chapter 342D, Hawai‘i Revised Statutes.

-4. Enforcement and Administration. Enforcement and administration of the provisions of this article shall be under the jurisdiction of the Department of Environmental Management of the County.

-5. Administrative Fines.

a) A fine may be imposed upon findings made by any designee of the Department of Environmental Management. Any person, corporation, public agency, or other entity who violates this article:

1. Shall be issued a written warning letter with a description of the violation(s) and shall have 15 days from the date of the letter to respond. Once contact is made with the department, the violator shall have 30 calendar days, excluding weekends and State holidays, to correct the violation(s).
2. For every violation that is not corrected in the timeframe, a fine of not more than \$1,000 per incident shall be imposed. In addition to the fine, DEM will seize and dispose of any product(s) in violation of this article.
 - b) Money from fines collected for violation of this article shall be deposited into the general fund and utilized by the Department of Parks and Recreation for mineral sunscreen dispensers, educational materials, and related purposes.

-6. No conflict with State or federal law. Nothing in this article may be interpreted or applied so as to create any requirement or duty in conflict with any State or federal law.”