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DEPARTMENT OF BUDGET AND FINANCE

Adoption of Chapter 6-83,
Hawaii Administrative Rules

January 9, 2012

SUMMARY

Chapter 6-83, Hawaii Administrative Rules, entitled "Hawaii One Call Center Subsurface Installation Damage Prevention Program", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 6

DEPARTMENT OF BUDGET AND FINANCE

CHAPTER 83

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PREVENTION PROGRAM

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SUBCHAPTER 1

GENERAL PROVISIONS

§6-83-1 Purpose of chapter. The purpose of this chapter is to adopt standards for the administration and enforcement of chapter 269E, HRS, the Hawaii one call utility notification law for establishment of a one call center system to protect, during excavation activity, all subsurface facilities which include, but are not limited to facilities for the conveyance of water, drainage, sewer, telecommunications, cable television, electricity, oil, petroleum products, gas, optical signals, and traffic control, and for the transportation of hazardous liquids subject to 49 U.S.C. chapter 601. [Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §§269E-1, 269E-3, 269E-5)

§6-83-2 Application of additional sources. This chapter shall be read in context with chapter 269, HRS, chapter 269E, HRS, chapter 6-61, HAR, and any other applicable federal law and state law, including any commission rule and order. [Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §§269E-3, 269E-4)

§6-83-3 Definitions. In addition to the definitions contained in chapter 269E, HRS, the following definitions shall apply:

"APWA color code" means the American Public Works Association color code for marking subsurface facilities.

"Commission" means the Hawaii public utilities commission.

"Committee" means the one call advisory committee, as established in section 269E-4, HRS.

"Complainant" means any party authorized by chapter 269E, HRS, to file a formal or informal complaint against any excavator or facility operator for violation of chapter 269E, HRS, these rules, or any order of the commission.

"Confidential" or "proprietary" means any and all information whether commercial or technical in nature relating to a facility operator's business, including without limitation, know-how, data, processes, designs, photographs, drawings, specifications, software programs, and samples, which is marked with an indicator such as "confidential" or "proprietary".

"Emergency" means a sudden, unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services, as defined in section 269E-2, HRS.

"Excavator mark" or "premark" means the marks made by an excavator using white spray chalk or other suitable marking that indicates the perimeter of the proposed or continuing excavation.

"Formal complaint" means a written document filed by a complainant with the commission initiating the process described in sections 6-61-67 through 6-61-71, HAR, by which a complaint against an excavator or facility operator may be formally pursued.

"Hand-digging" means any excavation involving non-mechanized tools or equipment and includes, but is not limited to digging with shovels, picks, manual post hole diggers, and vacuum excavation.

"HAR" means the Hawaii Administrative Rules.

"HRS" means the Hawaii Revised Statutes.

"Informal complaint" means a written document filed by a complainant with the commission initiating the process described in section 6-61-66, HAR, by which a complaint against an excavator or facility operator may be informally pursued.

"Inquiry identification number" or "inquiry number" means the number issued by the one call center to every excavator who contacts the center for the

purpose of notification of intent to excavate, as defined under chapter 269E, HRS.

"Locate request" means a communication between an excavator and one call center personnel in which a request for locating underground facilities is processed.

"Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American Public Works Association. Markings shall include identification letters indicating the specific type of the underground facility.

"Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any court or agency proceeding.

"Positive response" means the process whereby a facility operator: (1) notifies the center within the time period set by statute or rule, that it has marked, flagged, staked, or indicated by any acceptable method available to the operator under section 269E-9, HRS, the approximate location of its subsurface installation in the area of a dig site; and (2) the center then promptly makes available to the excavator the action taken by the facility operator.

"Respondent" means any person cited by the commission or its enforcement officer and subject to any statute administered by the commission or any order or rule issued or promulgated thereunder, or against whom a formal or informal complaint is filed or to whom an order or notice is issued by the commission instituting a proceeding or investigation.

"Site" means the specific place where excavation work is performed or contemplated and shall be identified by street address referenced to the nearest intersecting street and subdivision name, if applicable, as well as by lot and block number, tax map key, if available, and by kilometer or mile marker for railways or highways or any other method authorized by chapter 269E, HRS.

"System" means the center operation described in chapter 269E, HRS, and these rules and includes, but is not limited to the process whereby the center's customer service representatives answer incoming calls from prospective excavators seeking information on subsurface facilities that may be located at or near the prospective excavation site, and the outgoing call from the center to facility operators who have or may probably have subsurface installations at or in close proximity to the proposed excavation site.

"Ticket" or "message" means request for mark-out or electronic request for mark-out information transmitted from the one call center to facility operators. [Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §269E-3)

§6-83-4 Severability. If any provision of this chapter, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [Eff JAN 23 2012 (Auth: HRS §269E-3) (Imp: HRS §269E-3)

§§6-83-5 to 6-83-20 (Reserved)

SUBCHAPTER 2

ONE CALL CENTER SYSTEM REQUIREMENTS

§6-83-21 Hours of operation. The one call center shall provide for excavator access to the center by telephone, computer, and facsimile twenty-four hours per day, seven days per week, three-hundred sixty-five days per year. [Eff JAN 23 2012] (Auth: HRS §269E-3, 269-E5) (Imp: HRS §§269E-3, 269E-5)

§6-83-22 Statewide toll-free telephone access number; 811. (a) The one call center shall maintain a toll-free statewide telephone number with nationwide access for use by excavators to give notification to the center of their intent to excavate in the state. The center shall also maintain a toll-free fax number for excavators to access and receive communications from the center.

(b) The center shall also be available to any excavator or operator calling within the state by telephoning 811, as mandated by federal communications commission order. [Eff JAN 23 2012]
(Auth: 47 U.S.C. §251(e)(3), HRS §269E-3) (Imp: HRS §269E-3)

§6-83-23 Verification of data and map submittals. (a) Upon receipt of subsurface facility data or maps from a facility operator new to the system, or upon receipt of such data or maps from a facility operator currently registered with the system, the center shall make any necessary changes to center data and mapping systems regarding that facility operator's subsurface installations as soon as is practicable. The center shall annually provide all operators with hard copy, or electronic maps of their territories such that operators can provide updates regarding such information.

(b) The center shall verify with the facility operator that the changes made by the center accurately reflect, to the facility operator's satisfaction, a submittal of data or maps prior to making the changes available to the users of the system. [Eff JAN 23 2012] (Auth: HRS §269E-5)
(Imp: HRS §269E-3)

§6-83-24 Confidentiality of facility operator data and map submittals. The center shall take all reasonable steps to ensure that data or maps of

subsurface facilities submitted by a facility operator to the center are used only for purposes of compliance with chapter 269E, HRS. [Eff JAN 23 2012] (Auth: HRS §269E-5) (Imp: HRS §269E-3)

§§6-83-25 to 6-83-39 (Reserved)

SUBCHAPTER 3

DUTIES OF FACILITY OPERATORS

§6-83-40 Facility operator registration. Each operator of a subsurface facility, as defined in section 269E-2, HRS, shall register with the one call center by providing the facility operator business name, street address, mailing address, telephone number, e-mail address, a description of its operations, and all other information requested by the commission.

[Eff JAN 23 2012] (Auth: HRS §269E-5) (Imp: HRS §269E-3)

§6-83-41 Registration fee. Each subsurface facility operator shall pay to the one call center a fee in an amount to be determined by commission order.

[Eff JAN 23 2012] (Auth: HRS §269E-6) (Imp: HRS §269E-3)

§6-83-42 Facility operator subsurface facility information. (a) Pursuant to section 269E-5, HRS, and these rules, upon registration with the one call center, each facility operator shall furnish to the center information relating to the facility operator's subsurface installations that the center may use to identify facility operators that are known to have

subsurface installations in the area of a proposed excavation.

(b) Facility operators shall not be required to furnish to the center information relating to subsurface installations that are deemed confidential or proprietary. Any facility operator that deems its information regarding all or any portion of its subsurface installations confidential or proprietary must apply for a declaratory ruling from the commission, with notice to all members of the committee, including sufficient information to support its claim that the facilities are confidential or proprietary.

(c) Each facility operator who owns, operates, or maintains a subsurface installation as defined in section 269E-2, HRS, and these rules, shall furnish to the center information relating to its subsurface installations in one or more of the following formats:

- (1) Hard-copy maps clearly indicating the particular areas in which the facility operator requests to be contacted by the one call center when the center is notified by an excavator that it intends to excavate in a particular area;
- (2) Electronic data or software maps compatible with the one call center electronic hardware and software geographic mapping system; or
- (3) Any other form or manner of media transferable and acceptable to the one call center for accurate completion of facility operator notification purposes.

[Eff **JAN 23 2012**] (Auth: HRS §§269B-9, 269E-15) (Imp: HRS §269E-3)

§6-83-43 Subsurface facility information updates. (a) Once each year, a subsurface facility operator shall be notified by the center that it should submit updated subsurface installation information to the center in a form compatible with

the mapping and data system capabilities of the center.

(b) If the operator's information relating to its subsurface facilities has not changed during the course of the previous calendar year, the operator need not respond to the center request for updates.

(c) Discrepancies in records discovered by excavators and reported to facility operators shall be promptly corrected by the operator and that updated information shall be transmitted to the one call center for its records. [Eff JAN 23 2012]
(Auth: HRS \$269E-3) (Imp: HRS \$269E-3)

§6-83-44 Facility operator assessments for costs of center administration and operations. (a) Each facility operator shall, at times designated by commission order, submit payment to the commission of its pro-rata share of assessments owed toward the cost of administration and operation of the center.

(b) The commission by order shall establish the method to be used in calculating each facility operator's pro-rata share of each period's assessments for administration and operation of the center.
[Eff JAN 23 2012] (Auth: HRS \$269E-6) (Imp: HRS \$269E-3)

§6-83-45 Petition for credit toward public utility fee. (a) Pursuant to these rules and section 269E-6(f), HRS, each subsurface facility operator that pays public utility fees to the commission pursuant to section 269-30, HRS, may petition the commission for approval to apply a portion of its public utility fees as a credit toward its one call center fees.

(b) Any eligible facility operator seeking to apply for the credit of public utility fees toward the one call center fees shall file with the commission, at times, frequencies, and for amounts to be determined by commission order, a letter petitioning

for a credit to be applied toward its center fees.
[Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS
§269E-3)

§6-83-46 Response of facility operator upon receipt of notification; positive response. (a) Upon receipt of a notification of proposed excavation from the center, a facility operator shall respond within five working days, as defined by chapter 269E, HRS, and these rules, of that notification, or before the start of the excavation work, whichever is later, or at a later time mutually agreeable to the facility operator and the excavator, by:

- (1) Advising the excavator that the facility operator does not operate any subsurface installations that may be affected by the excavation;
- (2) Advising the excavator of the approximate location of the facility operator's subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available in the records of the facility operator;
- (3) Make available to the excavator, for inspection and copying at the excavator's expense, information in that specific facility operator's or agency's records on the approximate location of that specific facility operator's or agency's subsurface installations that may be affected by the excavation to the extent and degree of accuracy that the information is available in that specific facility operator's or agency's records; or
- (4) Locating and field marking in conformance with the APWA color code the approximate location and the number of subsurface installations that may be affected by the excavation to the extent and degree of

accuracy that the information is available as determined through the use of standard locating techniques or based on the records of the facility operator.

(b) The facility operator shall promptly notify the center by facsimile, e-mail, telephone, or the one call center computerized positive response system available on the worldwide web, of the action the facility operator has taken.

(c) All facility locate requests will result in a positive response from the facility operator to the one call center. A positive response may include one or more of the following: markings or documentation left at the job site, callback, fax, or automated response system, to notify the one call center.

[Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §269E-3)

§6-83-47 Facility operator to report excavator failure to mark. Any facility operator responding to a notification from the center as required by section 269E-9, HRS, and these rules, that finds that the excavator has not complied with section 269E-8, HRS, and these rules, by marking in white spray chalk or other appropriate markings under the circumstances, shall report the failure to respond to the center.

[Eff JAN 23 2012] (Auth: HRS §§269E-8, 269E-9) (Imp: HRS §269E-3)

§6-83-48 Training of facility operator's mark-out personnel. Each facility operator, as defined in chapter 269E, HRS, and these rules, shall ensure that it has in place and maintains a training program for personnel responsible for marking its subsurface facilities. [Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §269E-3)

§6-83-49 Mark-out record retention. (a) Each facility operator shall create and retain a record of mark-outs made for every locate request for a period of five years from the date of the mark-outs.

(b) Mark-out records can be in the form of photograph, written description, diagram or drawing, or any other suitable means of recordation.

[Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §269E-3)

§§6-83-50 to 6-83-60 (Reserved)

SUBCHAPTER 4

DUTIES OF EXCAVATORS

§6-83-61 Obtaining required permits. (a) An excavator required to obtain one or more permits as provided in section 269E-13, HRS, need not obtain the permit or permits prior to notifying the center of a proposed excavation as required by section 269E-7, HRS; provided, however, that notifying the center and subsequent receipt of a response by the operator shall not imply that the proposed work has met with the approval of the operator or agency responsible for the issuance of a required permit. [Eff JAN 23 2012]
(Auth: HRS §269E-13) (Imp: HRS §§269E-3, §269E-13)

§6-83-62 Marking of proposed excavation site.

(a) Every excavator, prior to complying with the notification requirements of section 269E-7 shall, pursuant to section 269E-8, HRS, mark the area of a proposed excavation, identifying the perimeter of the proposed excavation site.

(b) If an excavator determines that excavator marks using white spray chalk might be misleading,

reasonably subject to misinterpretation, or duplicative, the excavator shall inform the one call center that pre-marking of the excavation area is identified using flags, stakes, stake chasers, or a combination of any of these, marked with the excavator's name, company abbreviations, or initials, to the extent that it will enable facility operators to determine the area of proposed excavation.

(c) An excavator shall mark, at the very least, only the excavation work that it reasonably expects to accomplish up to the expiration date of the ticket.

(d) Once a facility operator has marked the location of its subsurface facility in the area of a proposed excavation, it shall be the responsibility of the excavator, and any subcontractor, employee or agent of the excavator performing work on behalf of the excavator, to take reasonable care to maintain the operator's marks pursuant to section 269E-11, HRS.

(e) If an excavator has failed to pre-mark the area of excavation, the operator need not mark its facilities in that area. [Eff JAN 23 2012]
(Auth: HRS §269E-8) (Imp: HRS §269E-3)

§6-83-63 Notification to one call center prior to excavation. (a) An excavator's notification to the center shall cause the center to generate a unique inquiry identification number, which number shall be given to the excavator and shall appear on the ticket generated and transmitted to appropriate facility operators in response to the request for mark-out.

(b) Included as part of each notification to the center required by this section and chapter 269E, HRS, an excavator shall provide the following, at a minimum, in its description of the excavation site:

- (1) County of the work site;
- (2) Place where the site is located;
- (3) Address or description of where the excavation will take place, including but not limited to:
 - (A) The nearest intersecting street;

- (B) Side of the street;
 - (C) Footages; and
 - (D) Other tie-in measurements as needed;
 - (4) The caller's name and telephone number;
 - (5) The excavator company name, address, and telephone number, and e-mail address, if available; and
 - (6) The start date and time of the excavation.
- (c) The center may request additional information that will assist in establishing the specific location of the proposed excavation site. Additional information requested may include, but is not limited to:
- (1) City;
 - (2) Street name and address;
 - (3) Length and direction of the proposed excavation;
 - (4) Latitude-longitude coordinates;
 - (5) Highway mile markers;
 - (6) Railroad mile posts;
 - (7) General directions or instructions;
 - (8) Map grids;
 - (9) Tax map key; or
 - (10) Any information that the excavator may wish to include in the description of the proposed excavation site.
- (d) When an excavator is responding to an emergency, the excavator shall telephone 911 to report the emergency to government authorities, notify the center of the emergency excavation as soon as is practicable under the circumstances, and follow the emergency procedures set forth under subchapter 5.
- [Eff JAN 23 2012] (Auth: HRS §269E-7) (Imp: HRS §269E-3)

§6-83-64 Excavator duty of care. As required under section 269E-12, HRS, an excavator shall exercise reasonable care whenever conducting excavation work. [Eff JAN 23 2012] (Auth: HRS §269E-12) (Imp: HRS §269E-3)

§6-83-65 Excavator requests for additional information. (a) If, after making every reasonable effort to locate the subsurface installation, an excavator cannot determine the exact location by hand-digging as set forth in section 269E-12, HRS, the excavator shall request that the operator provide additional information, through the center, to aid in locating the subsurface installation, and the operator, within two working days, shall provide any information that is available to the operator to aid the excavator in determining the exact location of the facilities.

(b) If after making every reasonable effort to locate the subsurface installation with the additional information as provided in subsection (a) the excavator still cannot determine the exact location of the subsurface installation by hand excavation, the excavator shall notify the center.

(c) The operator may, after making the reasonable efforts as provided in subsections (a) and (b), then determine the location of the operator's subsurface installation with appropriate hand tools, or allow the excavator to use powered equipment to continue the excavation, with or without on-site supervision by the operator; provided that this subsection shall not be construed as affording the excavator any immunity or protection from claims for damages or injuries relating to the excavation. [Eff JAN 23 2012]
(Auth: HRS §269E-12) (Imp: HRS §269E-3)

§6-83-66 Damage to subsurface installation. Any excavator conducting an excavation that results in contact with, unintentional exposure of, or damage to, a subsurface installation shall, before continuing with the excavation work in the immediate area of the subsurface installation:

- (1) Immediately call or notify the facility

- operator of the location, specifying the nature and scope of the damage and proceed to undertake any reasonable measures requested by the operator or dictated by the circumstances surrounding the incident;
- (2) Allow a reasonable period of time, consistent with industry practice, for any necessary repairs to be made to the subsurface installation; and
 - (3) If an emergency situation results, immediately call 911. [Eff JAN 23 2012]
- (Auth: HRS §269E-12) (Imp: HRS §269E-3)

§6-83-68 Excavators to notify operators of discrepancies in operator markings. Excavators shall notify any operator whose mark-outs or furnished information regarding their facilities are found not to be within the approximate location of the subsurface installation. [Eff JAN 23 2012]
(Auth: HRS §269E-7) (Imp: HRS §269E-3)

§6-83-69 Excavator to report operator failure to mark-out subsurface facilities. An excavator shall notify the center whenever a facility operator listed on a ticket fails to mark-out or furnish, or make available appropriate information regarding their subsurface facilities as required by chapter 269E, HRS, or these rules. [Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §269E-3)

§§6-83-70 to 6-83-79 (Reserved)

SUBCHAPTER 5

EMERGENCY EXCAVATIONS

§6-83-80 Notification; procedures. (a) If necessary to respond to an emergency situation, an excavator may begin an excavation without notifying the center prior to beginning emergency excavation as required by chapter 269E, HRS, and these rules, but shall call 911 immediately, and notify the center at the earliest practicable moment under the circumstances.

(b) In notifying the center of excavation or intent to excavate in an emergency situation, the excavator shall specifically identify the dangerous condition involved.

(c) While an excavator who excavates in an emergency situation shall not be liable on that basis for a failure to notify the one call center as required by section 269E-7, HRS, and as provided in subsection (a), nothing in this section shall relieve the excavator from liability if:

- (1) The excavator damages an underground facility which has been properly marked or which has not been marked; and
- (2) The excavation does not qualify as an emergency excavation.

(d) No excavator shall indicate to the notification center or to an operator that an event constitutes an emergency situation unless the excavator believes in good faith that the circumstances do constitute an emergency situation that demands immediate action to prevent or mitigate loss of or damage to life, health, property, or essential public services. [Eff JAN 23 2012]
(Auth: HRS §269E-3) (Imp: HRS §269E-3)

§§6-83-81 to 6-83-89 (Reserved)

SUBCHAPTER 6

ENFORCEMENT PROCEDURES

§6-83-90 Enforcement. The commission shall enforce chapter 269E, HRS, and these rules. [Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §269E-3)

§6-83-91 Application of this subchapter non-exclusive. Nothing in this subchapter shall be construed as limiting or precluding the commission from using its civil enforcement authority against any person, excavator or operator violating, allegedly violating, or suspected of violating the provisions of chapters 269 or 269E, HRS, these rules, or any order of the commission. [Eff JAN 23 2012] (Auth: HRS §269E-3) (Imp: HRS §269E-3)

§6-83-92 Complaint. (a) Unless ordered or directed otherwise by the commission, any complaint (formal or informal) against any person, excavator, or operator subject to the commission's jurisdiction, alleging a violation of any provision of chapter 269E, HRS, these rules, or any order of the commission shall be processed in accordance with chapter 6-61, HAR, when not inconsistent with the provisions of chapter 269E, HRS.

(b) All matters upon which a complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties.

(c) Whenever the commission is of the opinion that the complaint does not state reasonable grounds for investigation and action on the commission's part, the commission may dismiss the complaint. [Eff JAN 23 2012 (Auth: HRS §269E-14) (Imp: HRS §269E-3)]

§6-83-93 Commission investigation. (a) The commission may at any time investigate any person,

excavator or operator for alleged or suspected violations of chapter 269E, HRS, these rules, or any order of the commission.

(b) The commission may issue to the respondent an order or notice instituting an investigation that may take the form of an order to show cause. An order to show cause shall require the respondent to appear before the commission on the date and at the time and place specified in the order.

(c) An order to show cause must conform to the notice and service requirements of sections 269E-15, 91-9, and 91-9.5, HRS. The order shall be served upon the respondent and the commission, not less than fifteen days before the time set for the hearing.

(d) The order to show cause may include an order of abatement that requires the respondent to cease and desist from any present or future violations of chapter 269E, HRS, these rules, or any order of the commission.

(e) The abatement order may be entered on the commission's initiative or by agreement between the commission and respondent, with or without a finding of a specific violation.

(f) Failure to comply with a commission abatement order is a violation separate from any underlying violation of chapter 269E, HRS, these rules, or any other commission order. [Eff JAN 23 2012]
(Auth: HRS §269E-3) (Imp: HRS §269E-3)

§6-83-94 Commission investigation; default. If the respondent fails to appear on the date and at the time and place designated in the order to show cause, the commission may assume that the facts alleged in the order are true, and if the facts establish liability, the commission:

- (1) Will issue a final decision and order; and
- (2) May impose the maximum amount of penalties and assessments allowed under chapter 269E, HRS.

[Eff JAN 23 2012] (Auth: HRS §269E-15) (Imp:
HRS §269E-3)

§6-83-95 Civil penalty; payment. (a) The commission shall assess civil penalties in accordance with section 269E-14, HRS.

(b) Payment of civil penalty shall be made:

- (1) In person, at the commission's Honolulu office; or
- (2) By United States mail, postage pre-paid. If payment is by mail, it shall be by certified or registered mail. If payment is made in person, payment shall be by cash (United State's currency only), cashier's check, or money order. If payment is made by United States mail, payment shall be by cashier's check or money order only. No personal checks, business checks, or credit cards will be accepted, regardless of the manner of payment (whether in person, or by United States mail).

(c) In addition to civil penalties imposed, the nonprevailing party shall reimburse the prevailing party for legal fees and costs incurred by the prevailing party, as provided in section 269E-14(e), HRS. [Eff JAN 23 2012] (Auth: HRS §269E-15) (Imp: HRS §269E-3, §269E-14)

§6-83-96 Final order. The attorney general shall apply to the appropriate court for a judgment to enforce the provisions of any final order of the commission issued pursuant to this subchapter. In any proceeding to enforce the commission's final order, the commission need only:

- (1) Show that notice, where required, was given, and that a hearing was held or the time for requesting a hearing expired without such a request; and

(2) Present a certified copy of the final order.
[Eff JAN 23 2012] (Auth: HRS §269E-15) (Imp:
HRS §269E-3)

§6-83-97 Interim orders. The commission may issue an interim order that temporarily disposes of issues in a civil enforcement proceeding after notice to the respondent. The interim order remains in effect until final commission action, unless otherwise provided in the interim order. [Eff JAN 23 2012] (Auth: HRS §269E-15) (Imp: HRS §269E-3)

§6-83-98 Settlement of violation. The commission, at its discretion, may enter into discussions or negotiations and reach agreement with a respondent to settle any violation of chapter 269E, HRS, or these rules. A settlement agreement is not binding on the commission until it is approved by the commission. [Eff JAN 23 2012] (Auth: HRS §269E-15) (Imp: HRS §269E-3)

§6-83-99 Informal complaints; form; filing.

(a) The State or any county, excavator, or operator may file an informal complaint against any excavator or facility operator subject to chapter 269E, HRS.

(b) Informal complaints may be in letter form, or on a form prescribed by the commission. The commission will assign a unique number to each informal complaint.

(c) The informal complaint should state the names of the complainant, the respondent, the date and approximate time of the act or omission, and set forth fully and clearly the facts of the act, or failure to act, complained of. All available supporting papers, including, but not limited to call center records, property damage or medical bills, letters, notices,

and photographs, should be submitted at the time of filing the informal complaint, or within such time as the commission may allow, or the complaint may be returned to complainant as incomplete.

(d) The informal complaint should be written so as to fully and completely advise the commission and the respondent in what respects the provisions of chapter 269E, HRS, or rules have been, are being, or will be violated and should set forth in plain language the facts claimed to constitute the violation.

(e) An informal complaint should specify the relief sought or desired, such as, but not limited to, requests for compensation, and or damages, from respondent or that respondent should cease and desist from a practice.

(f) Informal complaints shall be filed with the commission by delivering in person, or causing to be delivered by the U.S. mail, the written document required under subsection (a). The informal complaint is deemed filed on the date it is received by the commission. If, in addition to the complaint, supporting documents or photographs are being filed, they shall accompany the informal complaint.

(g) If an informal complaint appears to be susceptible to informal disposition, a copy or a statement of the substance of the complaint may be transmitted by the commission to the respondent in an attempt to have the complaint satisfied by correspondence or conference without the need for a formal complaint.

(h) If a formal complaint is subsequently filed, the commission's processing of the informal complaint shall be discontinued. [Eff JAN 23 2012]
(Auth: HRS §269E-15) (Imp: HRS §269E-3)

§6-83-100 Formal complaints. (a) The State or any county, excavator, or operator may file a formal complaint against any excavator or facility operator subject to chapter 269E, HRS.

(b) Formal complaints shall:

(1) Be in writing;

(2) Comply with sections 6-61-15 to 6-61-24,

HAR;

- (3) State the full name and address of each complainant and of each respondent;
- (4) Set forth fully and clearly the specific act or acts complained of in ordinary and concise language; and
- (5) Advise the respondent and the commission completely of the facts constituting the grounds of the complaint, the injury complained of, and the exact relief desired.

(c) A complaint that alleges a violation of law shall clearly specify the particular parts of the law which are alleged to have been violated and the facts which the complainant relies upon to establish the violation.

(d) If two or more sections of the law or two or more requirements established pursuant to law are alleged to be violated, the facts claimed to constitute violation of one section, subsection, or requirement shall be stated separately from those claimed to constitute a violation of another section, subsection, or requirement whenever that can be done without undue repetition.

(e) If the formal complaint substantially complies with this subchapter, the commission shall serve a copy upon each respondent, together with an order requiring that the complaint be answered within twenty days after the date of service. Two copies of the formal complaint shall also be served on the consumer advocate. In emergency cases, the commission may require the filing within a shorter time period.

(f) If the formal complaint is not in substantial compliance with this subchapter, the commission shall return the complaint to the complainant with an explanation of the reasons why the formal complaint does not comply with this chapter.

[Eff JAN 23 2012] (Auth: HRS §269E-15) (Imp: HRS §269E-3)

§6-83-101 Answer to formal complaints. The respondent shall, within the time specified in the order or any extension thereof as the commission grants, file its answer with proof of service on the complainant and the consumer advocate. All grounds of defense, both of law and of fact, shall be raised in the answer. If the respondent has no information or belief upon the subject sufficient to enable an answer to the allegation, it may so state in the answer and place its denial upon that ground. [Eff JAN 23 2012] (Auth: HRS §269E-15) (Imp: HRS §269E-3)

§6-83-102 Motion to dismiss or to make more definite and certain. (a) Respondent may file with its answer a motion that the allegations in the complaint be made more definite and certain. The motion shall specify the defects complained of and the details desired. The respondent may also file a motion to dismiss a complaint because the complaint fails to state a claim upon which relief can be granted or for other valid reasons. If a motion to dismiss is filed before the answer, the commission shall set the date for filing the answer when it rules upon the motion.

(b) No reply to the answer shall be filed, but the complainant, within ten days after the filing of the answer, may file a motion that the answer be made more definite and certain. The motion shall specify the defects complained of and the details desired. [Eff JAN 23 2012] (Auth: HRS §269E-15) (Imp: HRS §269E-3)

§6-83-103 Hearing on formal complaints. When a respondent has filed its answer, the commission shall set a hearing on the formal complaint. The commission shall mail the notice of hearing by first class mail to the complainant and the respondent.

[Eff **JAN 23 2012**] (Auth: HRS §269E-15) (Imp:
HRS §269E-3)

§§6-83-104 to 6-83-120 (Reserved)

DEPARTMENT OF BUDGET AND FINANCE

Chapter 6-83, Hawaii Administrative Rules, on the Summary Page dated (Adoption date), was adopted on (Adoption Date), following a public hearing held on (October 31, 2011) after public notice was given in the Star Advertiser on (September 30, 2011).

The adoption of chapter 6-83 shall take effect ten days after filing with the Office of Lieutenant Governor.

Hermina Morita

Hermina Morita, Chair
Hawaii Public
Utilities
Commission

APPROVED:

Neil Abercrombie

Neil Abercrombie
Governor
State of Hawaii

Dated: 1-11-12

APPROVED AS TO FORM:

Randall S. Aishiyama

Deputy Attorney General

LEUTENANT GOVERNOR'S
OFFICE
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Filed