

(c) Responding arguments will be allowed. [Eff and comp FEB 27 2009] (Auth: HRS §171-6) (Imp: HRS §§91-10, 91-11)

§13-1-45 Board action; exceptions. (a) In the event no statement of exceptions is filed, the board may proceed to reverse, modify, or adopt the recommendations of the hearing officer.

(b) Upon the filing of the exceptions and briefs together with the briefs in support, the board may:

- (1) Render its decision upon the record;
- (2) If oral argument has been held, the board may render its decision after oral argument;
- (3) Reopen the docket and take further evidence; or
- (4) Make such other disposition of the case that is necessary under the circumstances. [Eff and comp FEB 27 2009] (Auth: HRS §171-6) (Imp: HRS §§91-2, 92-16, 171-6)

SUBCHAPTER 7

CIVIL RESOURCE VIOLATIONS SYSTEM

§13-1-51 Purpose of subchapter; statement of policy. This subchapter shall govern the department's practice and procedure relating to the administrative proceedings of civil resource violations of state law and to the assessment of administrative sanctions for such violations. This subchapter shall effectuate and carry out the purposes and policies of chapter 199D, HRS, and shall be construed and interpreted in the manner most favorable to the promotion of justice, expeditious processing and cost-effective resolution in every case involved. [Eff and comp FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-52 Definitions. As used in this subchapter, unless otherwise provided:

"Administrative hearing officer" or "hearing officer" means an individual authorized by the board to conduct a contested case hearing or examine a mitigation request pursuant to this subchapter.

"Administrator" means the individual who is responsible for the administration of the civil resource violations system.

"Civil resource violation" means any violation of state laws administered by the department, including statutes, administrative rules, and permit and license terms and conditions, for which an administrative penalty has been prescribed by law.

"Civil resource violations system" or "CRVS" means a system of administrative law proceedings as authorized under chapter §199D, HRS, and further prescribed in this subchapter, for the purpose of processing civil resource violations.

"Conservation and resource enforcement officer" or "officer" means an individual employed with the division of conservation and resource enforcement of the department whose primary duty is the enforcement of title 12, chapters 6D, 6E, and 6K, HRS, and the rules adopted thereunder within the areas under the jurisdiction of the department.

"Notice of civil resource violation" or "violation notice" is a document issued by the department to a respondent as a notification of a civil resource violation and a citation against the respondent for having committed the violation.

"Respondent" means a person who is charged with having committed a civil resource violation. [Eff and comp **FEB 27 2009**] (Auth: HRS §199D-1) (Imp: HRS §§92-3, 199-3, 199-4, 199D-1)

§13-1-53 Applicability. (a) This subchapter is applicable to all divisions, offices and attached agencies of the department, except as otherwise provided by law, where a notice of civil resource

violation has been issued pursuant to chapter 199D, Hawaii Revised Statutes and this subchapter.

(b) Any criminal prosecution against a person shall not preclude the state from imposing administrative sanctions pursuant to this subchapter against the same person for any civil resource violation committed in the same course of conduct.

(c) Any administrative proceeding against a person under this subchapter shall not preclude the state from pursuing a separate criminal prosecution against the same person for a criminal offense committed in the same course of conduct.

(d) For any proceedings instituted under this subchapter against violations of chapter 6K, HRS, or any rules adopted thereunder, the Kaho'olawe island reserve commission shall act whenever the board is responsible and authorized to act, and the chairperson of the Kaho'olawe island reserve commission shall act whenever the chairperson of the department is responsible and authorized to act.

(e) For any proceedings instituted under this subchapter against violations of chapter 174C, HRS, or any rules adopted thereunder, the commission on water resource management shall act whenever the board is responsible and authorized to act, and the chairperson of the commission on water resource management shall act whenever the chairperson of the department is responsible and authorized to act. [Eff and comp
FEB 27 2009] (Auth: HRS §§6K-8.6, 174C-15.5, 199D-1, 199D-2) (Imp: HRS §§6K-8.6, 174C-15.5, 199D-1, 199D-2)

§13-1-54 Jurisdiction. Any violation of state law administered by the department for which an administrative sanction or penalty has been prescribed, including statutes, administrative rules, and permit and license terms and conditions imposed by the board or the department or any attached agencies, may be adjudicated through the civil resource violations system of the department pursuant to this

subchapter. [Eff and comp FEB 27 2009] (Auth:
HRS §199D-1) (Imp: HRS §199D-1)

§13-1-55 Deputy director. Whenever delegated by the chairperson, a deputy director of the department may act on behalf of the chairperson for the purpose of discharging a duty under this subchapter. When acting on behalf of the chairperson for this purpose, a deputy director of the department shall carry the full responsibility and authorization that the board has given to the chairperson. [Eff and comp
FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-56 The administrator. The chairperson shall appoint an administrator to manage the civil resource violations system of the department under this subchapter. [Eff and comp FEB 27 2009]
(Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-57 Appointment and removal of administrative hearing officers. Administrative hearing officers serving under this subchapter shall be nominated by the chairperson and appointed by the board at its meetings for a term of up to two years and may be removed with or without cause in the same manner or by expiration of appointment. [Eff and comp
FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-58 Delegation of final decision making power. (a) The board may delegate to the chairperson or an administrative hearing officer the power to render the final decision in a CRVS contested case.

(b) Whenever the final decision making power is delegated to the chairperson, the chairperson shall only render the final decision after receiving and

reviewing the hearing officer's recommendation following a CRVS contested case hearing, and may

- (1) Adopt, modify or reverse the hearing officer's recommendation and issue the final decision;
 - (2) Remand the case to the hearing officer to hold further hearings for the purpose of receiving more evidence; or
 - (3) Refer the case to the board for disposition.
- (c) The administrator shall inform all parties of any delegation of final decision making power at the earliest opportunity but not later than the start of the taking of evidence. [Eff and comp

FEB 27 2009] (Auth: HRS §§171-6, 199D-1)
 (Imp: HRS §199D-1)

§13-1-59 Representation. Representation in any proceedings conducted under this subchapter shall be governed by section 13-1-10 of this chapter. [Eff and comp
FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-60 Filing and service. (a) All documents subject to filing under this subchapter shall be filed with the administrator. All filings shall comply with section 13-1-12 of this chapter.

(b) Service of documents shall comply with section 13-1-13.1 of this chapter. [Eff and comp
FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §§199D-1, 489E-7)

§13-1-61 Notice of civil resource violation; issuance, service and amendment. (a) The administrator or a conservation and resource enforcement officer shall have the power to issue a civil citation to any person who is charged with having committed a civil resource violation.

(b) The administrator or a conservation and resource enforcement officer shall have the power to

summon such person cited pursuant to subsection (a) above to answer to the violation notice and any citation contained therein, and to submit to administrative proceedings conducted pursuant to this subchapter.

(c) Service of the violation notice may be conducted by any employee of the department or anyone authorized by the administrator, and may be effectuated by one of the following methods:

- (1) By personal service on the respondent, with or without the respondent's signature acknowledging the service;
- (2) By certified mail, return receipt requested, to the respondent's last known address;
- (3) If the respondent is a domestic or foreign corporation or a partnership or other unincorporated association, by delivering a copy of the violation notice to an officer, a managing or general agent or partner, or to any other agent or partner authorized by appointment or by law to receive service of process; or
- (4) Where a civil resource violation involves an unattended vehicle or vessel, service may be conducted by a conservation and resource enforcement officer who shall conspicuously affix the violation notice to the vehicle or vessel for the registered owner to receive and answer.

(d) In any pending case, the department may amend a violation notice at any time prior to the filing of the respondent's answer to the original notice. [Eff and comp FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §§91-9, 91-9.5, 199D-1)

§13-1-62 Notice of civil resource violation; contents. A notice of civil resource violation shall include, at a minimum, the following:

- (1) The respondent's name and current address if available;

- (2) A statement that the notice is being issued pursuant to chapter 199D, HRS.
- (3) A citation of the specific resource violation, including a brief statement of the facts for which the notice is issued and a citation to the law that has been violated;
- (4) An assessment of all the administrative sanctions upon the respondent and the governing legal authorities;
- (5) A statement of the options provided in section 13-1-64 herein for answering the notice and the procedures necessary to exercise the options;
- (6) A summons to the respondent to answer the notice within twenty-one days of the service of the notice;
- (7) Name and signature of the officer or official who issues the notice;
- (8) Date of the issuance of the notice;
- (9) A statement that all citations made and sanctions assessed by the department in the notice are final unless contested by the respondent within twenty-one days of service of the violation notice;
- (10) A statement that failure to timely answer the violation notice and comply with all sanctions assessed by the department may result in the entry of a default decision for the department and additional penalty as specified in the violation notice for the past due compliance;
- (11) A statement that a request for mitigation without contesting the notice shall be examined and decided by a hearing officer without holding any hearing, and that the hearing officer's decision shall be final and shall not be subject to any administrative or judicial review thereafter;
- (12) A statement that any administrative action against the respondent for any civil

- resource violation shall not preclude the state from pursuing a separate criminal prosecution in a court of law for an offense committed in the same course of conduct; and
- (13) A space for the respondent's statement and signature. [Eff and comp FEB 27 2009]
(Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-63 Answer required; noncompliance subject to higher fine. (a) A respondent who receives a violation notice shall, within twenty-one days of the service of the violation notice, answer the notice by a method indicated in the violation notice.

(b) The department may assess a higher administrative fine for a civil resource violation if the violation notice is not answered or any sanctions assessed therein are not complied with by the end of the twenty-one day period or as otherwise required by the department, provided that proper notice of the higher fine has been given pursuant to sections 13-1-61 and 62 herein, and that the total administrative fine shall not exceed the maximum amount allowed by law.

(c) For good cause shown, the administrator may extend the period allowed for answering a violation notice. [Eff and comp FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-64 Respondent's options when answering.
In an answer to a notice of civil resource violation, the respondent shall choose from one of the following options:

- (1) Waive any contest to the notice of civil resource violation, and comply with all the monetary and non-monetary sanctions assessed therein;
- (2) Waive any contest to the notice of civil resource violation, but request mitigation of sanctions based on written justifications; or

- (3) Contest the notice of civil resource violation. [Eff and comp FEB 27 2009]
(Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-65 Counter claim disallowed. Any counterclaim by a respondent against the state, the department, or the officer or official who has issued the violation notice shall be disallowed in an administrative proceeding conducted by the board or a hearing officer. [Eff and comp FEB 27 2009]
(Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-66 Default. (a) When a respondent fails to answer a violation notice within twenty-one days of the violation notice or such further period granted by the administrator, or fails to attend a board hearing or a contested case hearing after proper service of notice, or otherwise fails to defend against a citation of civil resource violation, the respondent shall be deemed to have waived the right to contest the violation notice, and the board or a hearing officer shall enter the respondent's default, and may

- (1) Enter a finding of a violation;
- (2) Impose any sanctions for the violation not to exceed those that have been assessed in the violation notice; and
- (3) Enter a decision by default, which shall be final.

(b) For good cause shown, the board or a hearing officer may set aside an entry of default or a default decision. [Eff and comp FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-67 Proceedings after answer. (a) When a respondent in an answer waives contest to the violation notice and has complied with all sanctions assessed, the administrator shall record a satisfaction of the violation notice and conclude the case.

(b) An answer waiving contest but requesting mitigation shall be adjudicated in accordance with the following procedure:

- (1) The administrator shall serve a copy of respondent's answer to the department within ten days of the receipt of respondent's answer.
- (2) Upon the receipt of respondent's answer, the department shall have twenty days to file its statement of position, if any, and serve it upon all parties.
- (3) The administrator shall assign a hearing officer to examine the mitigating circumstances and decide on the mitigation request.
- (4) The hearing officer shall, at a time not later than thirty days after the filing of the department's statement of position or after the twenty-day period allowed for such filing, whichever is earlier, examine and decide on the mitigation request.
- (5) The hearing officer shall make a decision without the holding of any hearing or the attendance of any parties or their representatives or any witness, and may rely on the evidence in the record in rendering the decision.
- (6) The hearing officer's decision shall include findings of fact and conclusions of law as to the mitigating circumstances, and may adopt, modify or reverse any sanctions contained in the violation notice.
- (7) The administrator shall, within ten days of the hearing officer's decision, serve upon respondent a certified copy of the decision.
- (8) A hearing officer's decision on a mitigation request shall be final. No further administrative or judicial review shall be allowed.
- (9) When all sanctions imposed by the hearing officer have been complied with, the

administrator shall record a satisfaction of decision and conclude the case.

(c) When a respondent's answer is timely filed and contests the violation notice, the administrator shall assign the case to a hearing officer who shall proceed to the conduct of a CRVS contested case hearing pursuant to subchapter 5 of this chapter, except as otherwise provided herein. [Eff and comp
FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-68 Record of contested case hearing.

(a) The administrator shall retain an audio, video or stenographic record of all proceedings in a CRVS contested case for a period of not less than two years after the case is concluded.

(b) Any party may obtain a certified copy of the audio or video record upon a payment of \$10 per copy.

(c) Any party to a proceeding conducted under this subchapter may rely upon the audio or video record in producing a transcript of the proceeding or any part thereof. Unless the transcription is performed and attested by a stenographer certified by the administrator, a transcript produced from the audio or video record shall be deemed unofficial and shall not be considered as part of the record. A citation of an unofficial transcript in a subsequent proceeding conducted under this chapter shall be admissible, subject to any challenges by other parties and the authentication by the administrator.

(d) A hearing officer may grant a motion for stenographic recording of a proceeding conducted under this subchapter, provided that the cost shall be borne by the proposing party or allocated among parties by the hearing officer, and a deposit of \$200 for the stenographer's service shall be tendered to the administrator at the time when the motion is granted. [Eff and comp
FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-69 Final decision making procedure when power delegated. (a) Notwithstanding provisions in subchapter 6, the procedure provided in this section shall apply when the final decision power is delegated to the chairperson or a hearing officer pursuant to section 13-1-58 of this subchapter.

(b) After all evidence has been taken, the parties may submit, within the time set by the chairperson or hearing officer, a proposed decision

and order which shall include proposed findings of fact and conclusions of law.

(c) Within the time established by law, if any, or within a reasonable time after the parties have had an opportunity to file objections, if applicable, to file briefs and to present oral argument as may have been permitted, the chairperson or hearing officer shall render its findings of fact, conclusions of law, and decision and order.

(d) Every decision and order adverse to a party to the proceeding, rendered by the chairperson or a hearing officer, shall be in writing or stated in the record, and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, a separate ruling on each shall be incorporated in the decision rendered by the chairperson or hearing officer.

(e) Decisions and orders shall be served by mailing certified copies thereof to each party at the party's address of record or by personal delivery of a certified copy. When a party to a contested case has appeared by a representative or by counsel, service upon the representative or counsel shall be deemed to be service upon the party. [Eff and comp

§199D-1) FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS

§13-1-70 Administrative sanctions schedule; factors to be considered. (a) For the purposes of providing guidance in the assessment of administrative

sanctions and promoting consistency within the department, there shall be adopted by the board an administrative sanctions schedule.

(b) The administrator, divisions, and conservation and resource enforcement officers shall use the administrative sanctions schedule when issuing a notice of civil resource violation.

(c) The board or its delegates shall set a sanction for a civil resource violation after consideration of the administrative sanctions schedule and the following factors:

- (1) Value of the natural or cultural resource that is damaged or the subject of a theft, which may be measured by the market value of the resource damaged or taken and any other factor deemed appropriate by the board or its delegates, such as the loss of the resource to its natural habitat and environment and the cost of restoration or replacement;
- (2) Damages to the state in its facilities and services, including the present value of any accrued past damages and defined future damages;
- (3) Costs for the state to remedy any damages, restore any resources, repair any facilities, replace any assets, or recover any losses;
- (4) Costs for the state to enforce against, investigate and monitor the violation and its damages;
- (5) Fees and costs for the state to prosecute or process the violation in any legal or administrative proceedings, including attorneys' fees and costs;
- (6) Level of damages to the public for whom the state holds a public trust of the resource involved;
- (7) Pecuniary gains that have been realized or may be potentially realized by the respondent from an unauthorized commercial activity;

- (8) Concurrent civil resource violations when perpetrating the underlying violation;
- (9) Concurrent violations of any federal laws or state laws other than those administered by the department;
- (10) Level of the respondent's culpable intent as compared to the state's responsibility in proper signage, other actual or constructive notice, enforcement, and promotion of public awareness and education;
- (11) Repetition and duration of resource violations of the same or similar type in the respondent's history;
- (12) Extent of the respondent's cooperation with authorities and compliance with inquiries, requests, orders, protocols, or warnings that may have been conveyed to the respondent through written or verbal notification from the department;
- (13) Voluntary actions taken by the respondent to mitigate or avoid any damages or injuries resulting from or threatened by the violation;
- (14) The respondent's capability and resources in providing any redress and restitution;
- (15) The respondent's willingness to voluntarily comply with all the sanctions assessed in the notice of civil resource violation for any specific violation; and
- (16) Any other factors that may be identified as constructive for the fair assessment of administrative sanctions. [Eff and comp
FEB 27 2009] (Auth: HRS §199D-1)
(Imp: HRS §199D-1)

§13-1-71 Determination of a repeat violator.

For the purpose of assessing administrative fines and other sanctions on a civil resource violation, a prior criminal or administrative citation shall not subject the same person to being determined as a repeat violator unless a final judgment or administrative

decision on the prior citation has been entered by a judge, the board, the chairperson or a hearing officer with a finding and conclusion of a violation of a state law administered by the department. [Eff and comp FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)

§13-1-72 Enforcement and stay of a final decision. (a) Unless otherwise stated in a final decision, all administrative fines, other monetary assessments and non-monetary sanctions shall be due within thirty days of the service of the final decision imposing such fines and sanctions.

(b) Unless otherwise decided by the board, upon request filed by a party, the chairperson may stay enforcement of a final decision pending a judicial review of the case. The chairperson's decision as to the request for stay is final.

(c) The department is authorized to take any legal action to collect any overdue monetary sanctions or enforce any overdue non-monetary sanctions imposed in an administrative proceeding under this subchapter, or may refer the case to the attorney general for such an action. [Eff and comp FEB 27 2009] (Auth: HRS §199D-1) (Imp: HRS §199D-1)