

Catalyzing Cesspool Conversions *with* Responsible Management Entities

Opportunities in Hawai‘i’s Legal and Regulatory Landscape



IMAGE: DIAMOND HEAD VOLCANO © ERIC TESSMER / FLICKR

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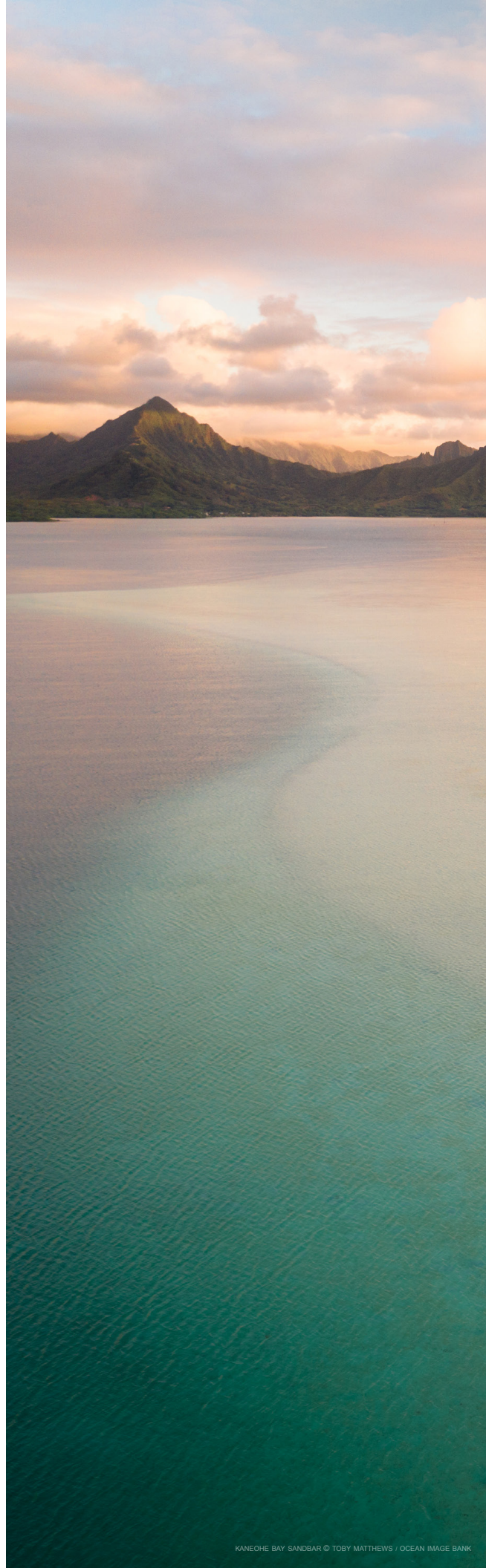
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I. Executive Summary

With a state mandate to convert all 83,000 cesspools by 2050, the homeowners of Hawai'i are facing several challenges, including a lack of funding, guidance, and governance. Because many homeowners are unable to afford individual conversions, communities need more options for decentralized wastewater treatment solutions. Affordability and governance are central challenges for cesspool conversions in Hawai'i. Responsible management entities (RMEs) can play an important role, by providing vital local organization, connecting communities and homeowners with state and municipal resources, and aggregating projects to reduce costs and expand affordability at scale. State law and policy, however, will affect RME capacity to fulfill these functions.

This whitepaper finds that Hawai'i state law generally enables RMEs to own, operate, and maintain decentralized wastewater treatment systems. These are the types of systems that will often replace cesspools and can help RMEs facilitate community management. However, state policy renders most RMEs ineligible for the Clean Water State Revolving Fund (CWSRF), leaving public funds on the table that otherwise could support conversions. This paper suggests that Hawai'i Department of Health (DOH), can remove this barrier by using its policy and rulemaking authority to significantly expand eligibility to the CWSRF, without a change in state law.

This conclusion is based on a review of federal law, Hawai'i state law, and Hawai'i regulations and clean water infrastructure policy. First, the whitepaper identifies that the federal Clean Water Act (CWA) supports RME formation and operation. It permits CWSRF programs to support many decentralized wastewater activities and allows public and private organizations and individuals to receive assistance. Next, the whitepaper reviews the state laws and regulations governing Hawai'i CWSRF and finds that state statute and regulations allow both public and private RMEs to receive CWSRF support; however, the Hawai'i DOH's policies make private RMEs ineligible for direct support. Beyond funding and financing, the whitepaper identifies that Hawai'i decentralized wastewater regulations generally allow RMEs to own systems, make state-required certifications, and obtain DOH authorizations. Some RMEs will need to ensure their service charges comply with Hawai'i utility rate procedures and regulations, but these regulations will not apply to member-owned or controlled RMEs, allowing them more administrative flexibility and decreasing compliance costs. Finally, the whitepaper identifies that DOH has the ability to change its policies to expand CWSRF eligibility to include most RMEs, and it can create programs to support households and RMEs through policy or administrative rules.

II. Conversion Mandate and Policy Context for the Intended Audience and Use of this Paper

This whitepaper is intended for Hawai'i DOH staff, state and county policymakers, and practitioners involved in wastewater planning and financing. It may also inform community organizations and partners exploring cesspool conversion approaches.

The paper provides an overview of RMEs, their potential role in the Hawai'i cesspool conversion, and how federal, state, and local frameworks support or constrain their use. It also identifies policy and administrative opportunities to expand access to financing and enable more coordinated, programmatic approaches, particularly CWSRF policies within DOH's authority to update.

Overall, it is designed to support decision-making on how RMEs could help reduce costs, improve implementation efficiency, and help to achieve the Hawai'i cesspool conversion mandate. To aid in these goals and provide context for the rest of the whitepaper, a brief introduction to the Hawai'i conversion mandate and a policy framework follow.

A. CONTEXT: Cesspool Conversion Challenges in Hawai'i

Hawai'i faces significant wastewater pollution challenges that affect public health, groundwater, nearshore water quality, coral reefs, and coastal communities. In response, the State enacted Act 125 (2017), which requires the upgrade, conversion, or connection of all cesspools statewide (~83,000) by 2050. Achieving this mandate will necessitate broader wastewater management improvements, particularly in rural and unsewered areas, such as scalable financing, coordinated implementation and entities capable of managing decentralized systems over time, such as RMEs. Efforts to advance RMEs in Hawai'i have been supported by organizations such as Wastewater Alternatives & Innovations (WAI) and the Pacific International Center for High Technology Research (PICHTR), which have been leading work to develop the State's first coordinated RME-focused training and technical assistance program.

Implementation will be expensive, and homeowner affordability is a central challenge. Reports from the Hawai'i Island Cesspool Conversion Task Force and the statewide Cesspool Conversion Working Group highlight the need for sustainable financing solutions to overcome affordability barriers.¹ Statewide analyses also identify a substantial gap between available funding and the resources needed to meet the state's goals.

Most conversions currently occur on a parcel-by-parcel basis, creating high transaction costs for individual homeowners who must independently navigate technology selection, permitting, installation, financing, and long-term maintenance. Many of these homeowners will also face challenges accessing or qualifying for financing. The existing fragmented approach to cesspool conversion will increase costs, extend timelines, and create significant administrative and financial burdens for homeowners.

¹ County of Hawai'i, [Hawai'i County Cesspool Conversion Task Force Report](#), Dec. 2025; Carollo and Harris & Associates, [Cesspool Conversion Finance Research Summary Report](#), State of Hawai'i Department of Health, Jan. 2021.

B. Legal Framework for Policy Changes

This whitepaper proposes policy changes, and the legal source of a policy has important implications for policy change and advocacy. If federal law requires a policy, that law must be changed to adopt a different policy. If, instead, a state agency's (i.e. DOH) formal policy document is the source of a policy, the agency can change the policy when it amends its policy document, so long as it remains within the confines of federal and state statutes and regulations. Sources of policy fall into a hierarchy based on whether the law is federal or state and whether the policy is required by statute, regulation, or formal policy document. In the case of the Hawai'i CWSRF, a major focus of this whitepaper, here is the general hierarchy and how to amend policies set at each level:

- **Federal Statute:** CWA, CWSRF sections codified primarily at [33 U.S.C.A § 1381 to 1389 State Water Pollution Control Revolving Funds](#).
 - **How to amend or change policy?**
New federal legislation that amends the CWA.
- **Federal Regulation:** EPA Regulations, primarily [40 CFR § 35 Subpart K—State Water Pollution Control Revolving Funds](#).
 - **How to amend or change policy?**
Generally, EPA would promulgate a new regulation by rulemaking with notice and comment.
- **State Statute:** Hawai'i state law, codified primarily at [Haw. Rev. Stat. Ann. §§ 342D–80 to 342D–93 Water Pollution Control Financing](#).
 - **How to amend or change policy?**
New state legislation that amends this statute.
- **State Regulation:** Hawai'i DOH regulations, primarily [Haw. Code R. 11-65 Environmental State Revolving Funds](#).
 - **How to amend or change policy?**
Generally, DOH would promulgate a new regulation according to the Hawai'i rulemaking procedure.
- **State Formal Policy Document:** DOH's annual CWSRF Intended Use Plan (IUP): [SFY2025 and SFY 2026 \(Draft\)](#).
 - **How to amend or change policy?**
DOH would update policy in its next IUP.



III. INTRODUCTION:

RMEs Can Help Support Cesspool Conversions, But Hawai‘i Laws, Regulations, and Policies Will Affect Their Function

RMEs offer a tool to help Hawai‘i communities meet the challenges of cesspool conversions, particularly in rural and unsewered areas where implementation is often fragmented at the household level. An RME is an organization that takes ownership or responsibility for decentralized wastewater treatment systems like septic tanks and small community or cluster systems. RMEs can reduce the burden on individual homeowners by coordinating system selection, permitting, and installation and financing, rather than requiring each household to navigate these processes independently.²

By pooling demand across multiple properties, RMEs help communities build financial capacity for conversions, improve access to financing, and streamline implementation of new treatment systems. After conversion, an RME is responsible for operation and management and, ultimately, system performance. The RME model shifts long-term technical and management responsibility away from individual households and toward a coordinated entity, with potential benefits like cost reduction, more consistent maintenance, better regulatory compliance, and overall system performance improvements.

RMEs can take a variety of organizational forms and provide different types of management depending on each community’s diverse needs. Communities can organize RMEs as private nonprofits,³ cooperatives,⁴ public districts,⁵ and municipal utilities. RMEs can take different levels of responsibility for treatment systems from responsibility for operations and maintenance to ownership and community level planning. Generally, the higher the level of “environmental sensitivity,” the more responsibility an RME should take.⁶ State law affects an RME’s organizational form, how they function, and the level of oversight and responsibility they can exercise.

² For EPA examples of RMEs, see EPA, [Decentralized Wastewater Management Case Studies—Otter Tail Lake](#), 2015; EPA, [Decentralized Wastewater Management Case Studies—Pena Blanca](#), 2015; EPA, [Decentralized Wastewater Management Case Studies—Shannon City](#), 2015; EPA, [Decentralized Wastewater Management Case Studies—Phelps County](#), 2015; EPA, [Decentralized Wastewater Management Case Studies—Blacksburg](#), 2015.

³ Black Belt Unincorporated Wastewater Program, [Improving Community Health. One Backyard at a Time—Our Solution](#) (describing how the nonprofit installs, repairs, and maintains DWTS across the Alabama Black Belt region); H2Ozarks, [Our Missouri Septic System Remediation Program](#) (providing funding to homeowners to “repair or replace failing on-site septic systems,” helping homeowners plan projects and determine eligibility and complete required documents for financial assistance, and providing educational resources).

⁴ Macrellis, A. and Douglas, B., [Update of the Advanced On-site Wastewater Treatment and Management Market Study: State Reports](#), Stone Environmental, Inc., 2009 16, 57, 96, 104, 142, 154, 162, 202 (surveying state practices and documenting cooperative RMEs).

⁵ Christopherson, S. and Anderson, J., [Twenty Years of Successful Onsite Wastewater Management – The Otter Tail, Minnesota Management District](#), University of Minnesota Water Resources Center, 2004 provides an in depth review of the Otter Tail RME.

⁶ EPA, [Voluntary National Guidelines for Management of Onsite and Clustered \(Decentralized\) Wastewater Treatment Systems](#), Mar. 2003, 16.

This whitepaper will explore how some Hawai'i laws, regulations, and policies support RMEs in a variety of organizational forms, while others limit RMEs. Analyses of cesspool conversion in Hawai'i have highlighted the need for community organizations or RMEs to facilitate infrastructure project financing and execution, monitor system performance, permit systems, and support system management.⁷ To perform these functions, RMEs will need to obtain specific authorizations and approvals and take responsibility for system performance, and Hawai'i generally allows this. RMEs can also help build or replace decentralized wastewater systems. However, Hawai'i CWSRF, the primary public funding source for clean water infrastructure, currently limits eligibility to counties or state agencies acting as RMEs. A change in CWSRF policy, which could be done by DOH through its Intended Use Plans (IUP), could expand eligibility to private entities without the need for new state law or regulation.

IV. The Federal Clean Water Act Allows SRF to Provide Financial Assistance for Cesspool Conversion and to RMEs

Decentralized wastewater treatment systems are primarily regulated at the state and local level, but federal law has important implications for public funding of these systems. Fortunately, federal law and guidance make clear that CWSRF programs may provide financial assistance for decentralized wastewater replacement and installation projects to both public and private entities that could function as RMEs.

The CWA establishes the SRF program and defines eligible uses of assistance, which include cesspool conversions.⁸ CWA allows CWSRF to support new treatment plants, sewer extensions, and “the construction, repair, or replacement of decentralized wastewater treatment systems,” including septic tanks,⁹ which often replace cesspools. According to EPA, CWSRFs can finance: planning, design, and construction costs for new septic installations; repair and replacement; converting cesspools to septic; cluster systems; and set-up fees for special districts or RMEs;¹⁰ although operations and maintenance costs are not eligible.

The CWA also defines applicant eligibility, and EPA confirms that states can provide SRF support for decentralized wastewater projects to RMEs. Assistance for decentralized wastewater projects is not limited to municipal or public applicants. The CWA allows state CWSRFs to assist “domestic”—that is household—septic and wastewater treatment projects.¹¹ Assistance can come in the form of financing, loans,¹² or funding, usually grants or principal forgiveness which is directly available for certain municipal projects.¹³ EPA guidance states that citizen groups and

⁷ Carollo and Harris & Associates, [Cesspool Conversion Finance Research Summary Report](#), State of Hawai'i Department of Health, Jan. 2021, 14, 22–24. See also County of Hawai'i, [Hawai'i County Cesspool Conversion Task Force Report](#), Dec. 2025, 23, 47 (discussing household affordability as a major barrier to conversion and the potential for community level organization and “collaboration across groups” to help meet this challenge).

⁸ [33 U.S.C.A. § Ch. 26, Subch. VI.](#)

⁹ [33 U.S.C.A. § 1383\(c\)\(4\)](#). EPA water program NPDES regulations make clear that “treatment systems...for domestic sewage” include septic tanks— “[s]eptage means...material pumped from a septic tank, cesspool, or similar domestic sewage treatment system....” [40 C.F.R. § 122.2](#). EPA uses a different term—“treatment works”—to refer to methods of domestic sewage treatment that do *not* include septic tanks. *Id.*

¹⁰ EPA, [Financing Decentralized Wastewater Treatment Systems](#), Jan. 2022, 8.

¹¹ For decentralized wastewater projects, Congress expands eligibility beyond municipal systems—“municipal wastewater or domestic sewage” treatment systems are eligible. [33 U.S.C.A. § 1383\(c\)\(4\)](#).

¹² [33 U.S.C.A. § 1383\(d\)\(1\)](#).

¹³ [33 U.S.C.A. § 1383\(i\)](#).



nonprofit organizations are eligible for assistance.¹⁴ State CWSRF may also provide principal forgiveness indirectly to individuals and other organizations,¹⁵ or to a nonprofit or other organization acting as a pass through entity for CWSRF support for decentralized wastewater projects.¹⁶

V. Hawai‘i State Law and Regulations Allow Many Organizations to Receive CWSRF Assistance as RMEs, But Department of Health Regulations Make Most Organizations Ineligible

Within this federal framework, states administer their CWSRF and can place additional conditions on support; Hawai‘i CWSRF laws and regulations generally align with federal eligibility and do not impose major statutory restrictions on assistance. However, Hawai‘i CWSRF policies limit eligibility to counties, effectively constraining RME access. Hawai‘i State Legislature recently passed a bill that would create a new cesspool conversion revolving fund,¹⁷ which would help households directly access public support but does nothing to facilitate RME access.

¹⁴ EPA, [Financing Decentralized Wastewater Treatment Systems](#), Jan. 2022, 8. See also EPA, [Funding Decentralized Wastewater Treatment Systems with the CWSRF](#), June 2016, 1 (“The CWSRF may provide assistance to any public, private or non-profit entity for decentralized projects. Eligible loan recipients include community groups, farmers, homeowners, small businesses, conservation districts, and nonprofit organizations”). State CWSRF can also support nonprofits that assist certain individuals undertaking decentralized wastewater projects. [33 U.S.C.A. § 1383\(c\)\(12\)](#). The Clean Water Act generally limits additional subsidization to municipal and state government entities, [33 U.S.C.A. § 1383\(i\)](#), but Congressional appropriations have allowed 10% of the base grant to go to any CWSRF eligible recipient. [CWSRF IUP SFY 2025, FFY 2026, 5](#); [CWSRF Draft IUP SFY 2026, FFY 2027, 4-5](#).

¹⁵ Carollo and Harris & Associates, [Cesspool Conversion Finance Research Summary Report](#), State of Hawai‘i Department of Health, Jan. 2021, D-1; Ohio Environmental Protection Agency, [Water Pollution Control Loan Fund Program Year 2024 Program Management Plan](#), G-4, Jan. 26, 2024.

¹⁶ Washington’s CWSRF provides loans and forgiveness to Craft3, a pass through entity that then provides loans to homeowners. EPA, [Financing Decentralized Wastewater Treatment Systems](#), Jan. 2022, 20.

¹⁷ LegiScan, [Hawaii House Bill 1618](#).

Hawai'i administers its CWSRF through state statute, administrative rules, and policy. Hawai'i state law makes the Hawai'i DOH responsible for CWSRF administration.¹⁸ DOH promulgates regulatory rules and publishes policies in its CWSRF IUP. While state law and DOH rules do not significantly restrict eligibility and support for decentralized wastewater projects, DOH's IUP policies introduce additional limitations.

State law and DOH regulations establish broad eligibility for CWSRF assistance, including counties, state agencies, and private entities. State law defines an "eligible party" as a "county, state agency, or private person"¹⁹ where person "means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity."²⁰ Together, these definitions allow specific public entities (i.e., counties and state agencies) and any private person or entity in the definition of person (e.g., private partnerships, firms, associations, corporations, non-profit organizations, cooperative organizations, trusts, estates, or other private legal entities) to be eligible for CWSRF assistance. This limits the eligibility of some public corporations, but maintains the eligibility of federally allowed private entities. DOH CWSRF regulations do not further restrict these definitions.²¹

State law and DOH regulations are also broadly aligned with federal eligibility for decentralized wastewater activities and projects. Under state law, the CWSRF's purpose is to "provide financial assistance to eligible parties for projects or activities" related to clean water infrastructure. This includes "projects or activities" to "enable eligible parties to construct, repair, or replace a privately owned decentralized wastewater treatment system and individual wastewater system that treats municipal wastewater or domestic sewage under [the federal CWA SRF section]."²² DOH CWSRF regulations further define loan fees and default procedure and penalties, but have no additional regulation of eligible activities and projects.²³ The state law framing is broad, encompassing construction, repair, and replacement, as well as "enab[ling]" activities and projects. Given this broad phrasing, and the express reference to the federal section, state law likely allows the funding of any project or activity eligible under federal regulations.

Unlike its regulations, DOH's CWSRF policies introduce additional restrictions not found in statute or regulation. While DOH's IUP makes cesspool conversion one of the CWSRF's long term goals,²⁴ its policies restrict its funding to public facilities and systems owned by a state or county government agency.²⁵ In practice, this excludes many RMEs, which are often structured as a nonprofit or private entity. While private entities are eligible under state law, they are not eligible under current IUP policy. As a result, RMEs are effectively excluded from direct access to CWSRF assistance unless operating through a state- or county-owned entity.

¹⁸ [Haw. Rev. Stat. Ann. § 342D-82 \(West\)](#).

¹⁹ [Haw. Rev. Stat. Ann. § 342D-80 \(West\)](#). State law on the revolving fund references eligible parties, "(b) The purpose of the revolving fund is to provide financial assistance to eligible parties for projects or activities...." [Haw. Rev. Stat. Ann. § 342D-83 \(West\)](#).

²⁰ [Haw. Rev. Stat. Ann. § 342D-1 \(West\)](#).

²¹ [Haw. Code R. 11-65-02 \(Weil\)](#). Beyond the SRF regulations, DOH general regulations and water pollution control regulations are silent on "eligible party" and either reference the statutory definition of person or provide a substantially similar definition. [Haw. Code R. 11-1-3 \(Weil\)](#); [Haw. Code R. 11-55-01 \(Weil\)](#).

²² [Haw. Rev. Stat. Ann. § 342D-83\(b\) \(West\)](#). DOH policy lists cesspool replacements with "septic tanks, aerobic units, constructed wetlands, or treatment plants" as eligible projects. [CWSRF IUP SFY 2025, FFY 2026, 13](#); [CWSRF Draft IUP SFY 2026, FFY 2027, 12](#).

²³ [Subchapter 2. Clean Water State Revolving Fund \(§ 11-65-03 to § 11-65-09\)](#).

²⁴ [CWSRF IUP SFY 2025, FFY 2026, 11](#).

²⁵ [CWSRF IUP SFY 2025, FFY 2026, 12](#). See *also*, the list of projects to be funded in SFY 2026 which lists only Kaua'i, Maui, Hawai'i, and Honolulu-ENV, and Honolulu-BWS as recipients. *Id.* at 10. The draft IUP for FY 2027 maintains this definition. [CWSRF Draft IUP SFY 2026, FFY 2027, 11](#).

The recently created cesspool conversion revolving loan fund focuses on household-level financing. Administered by the Hawai'i Green Infrastructure Authority, the fund will provide low-interest and forgivable loans and other authorized financial assistance to "eligible households,"²⁶ helping to address the gap in active financial support programs for conversion.²⁷ Although the revolving fund would help connect households to public funding including transfers from the CWSRF,²⁸ it does not create a pathway for RMEs to access CWSRF funding.

VI. Hawai'i State Laws and Regulations Allow RMEs to Own or Manage Individual and Cluster Wastewater Systems and Most RME Service Charges Are Not Subject to Utility Rate Regulations

One key benefit of RMEs is their ability to own, take legal accountability for, and manage individual and cluster wastewater systems, enabling more coordinated and scalable service delivery. For an RME to take accountability for, or ownership of, these wastewater systems, state law must allow legal organizations, and not just individuals, to be legally accountable or take ownership. Additionally, to effectively provide management services, RMEs will need to charge fees, raising the question of whether state regulations, especially utility fee regulations, apply to RMEs. In Hawai'i, state laws and regulation generally allow RMEs to own or take legal responsibility for individual and cluster wastewater systems, however, some RMEs may be subject to state utility rate regulation if the RME is not publicly-owned or member-controlled.

²⁶ LegiScan, [Hawaii House Bill 1618](#), Section 2 § 196(b).

²⁷ State of Hawai'i, Department of Health, [Financial Support Programs for Cesspool Conversion](#) (stating there are no active support programs for conversion). Counties remain eligible to apply to the CWSRF for conversion projects, see County of Kaua'i's project at [CWSRF IUP SFY 2025, FFY 2026, 10](#). In addition, a recent analysis did note some limited local programs that support cesspool conversions. County of Hawai'i, [Hawai'i County Cesspool Conversion Task Force Report](#), Dec. 2025, 26.

²⁸ LegiScan, [Hawaii House Bill 1618](#), Section 1 (1).





A. Hawai'i Requires Owners to Meet Regulatory Requirements and Allows Organizations, Like RMEs, to Take System Ownership

Hawai'i requires individual and cluster wastewater owners to take specific actions and obtain authorizations and, by allowing private and public organizations to own systems, Hawai'i facilitates RME ownership and management. Performance and design regulations focus on the “owner” of individual wastewater systems, requiring that they take specific actions: certify operation and maintenance in compliance with regulations,²⁹ obtain DOH authorization for system operation,³⁰ apply for approval of new systems and modifications,³¹ meet design requirements,³² and obtain service contracts.³³ Similarly, “owners” of cluster or community wastewater treatment works will need to comply with regulations related to their design and operation.³⁴ In addition to people, Hawai'i allows any public or private legal organization to be a system owner,³⁵ opening the door to RMEs taking over system ownership. RMEs should be able to take over ownership of individual and cluster or community systems, expanding service capacity and supporting more coordinated wastewater solutions.

²⁹ [Haw. Code R. 11-62-31.1\(e\) \(Weil\)](#).

³⁰ [Haw. Code R. 11-62-31.1\(f\) \(Weil\)](#).

³¹ [Haw. Code R. 11-62-37\(b\) \(Weil\)](#).

³² [Haw. Code R. 11-62-33.1\(a\) \(Weil\)](#).

³³ [Haw. Code R. 11-62-33.1\(b\) \(Weil\)](#). There are also requirements for owners of “innovative” systems. [Haw. Code R. 11-62-35 \(Weil\)](#).

³⁴ [Subchapter 2. Wastewater Treatment Works \(§ 11-62-21 to § 11-62-29\)](#). Regulations place requirements on owners and their agents, [Haw. Code R. 11-62-23.1 \(Weil\)](#).

³⁵ Owner is a “person” with “legal title” to an “individual wastewater system” or the owner’s “duly authorized representative.” [Haw. Code R. 11-62-03 \(Weil\)](#). A person has the same broad definition discussed in the CWSRF section. *Id.* A person includes “public or private corporation—”individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.” [Haw. Rev. Stat. Ann. § 342D-1 \(West\)](#). In this case, RMEs could likely be either the owners or the authorized representative. Wastewater treatment works regulations use the same definition of owner as individual wastewater systems. [Haw. Code R. 11-62-23.1 \(Weil\)](#).

B. RMEs That Are Member- Controlled or Owned Organizations Are Not Subject to Utility Rate Regulations, But Other RMEs Will Likely Need to Comply with Utility Rate Regulations

RME service charges may be subject to oversight by the Hawai'i Public Utilities Commission (PUC), depending on whether the RME is structured as a member- controlled or owned organization. The PUC regulates the rates of “public utilities,” including sewage disposal services.³⁶ RMEs need to charge for services and these charges will need to comply with PUC regulations and procedures if the RME meets the definition of a public utility.³⁷ Regulatory compliance requires additional organizational capacity and raises administrative costs, important considerations for potential RMEs. RMEs formed as member- owned or controlled organizations can avoid rate regulation compliance costs and maintain administrative flexibility because they are not “public utilities.” Other organizations operating as RMEs, however, may qualify as “public utilities.”

PUC regulation defines “public utilities” to include domestic sewage treatment facilities that provide services for public use. A public utility includes the owner, operator, or manager of “any plant or equipment...directly or indirectly for public use...for disposal of sewage” including “a private sewer company or sewer facility.”³⁸ An RME will own, operate, or manage individual wastewater systems or cluster systems which definitionally dispose of “domestic sewage,” so the question is if the RME does this “for public use.”³⁹ In this context, “public utilities” refers to utilities that serve the public, not utilities that are publicly owned. In fact, PUC does not regulate publicly owned utilities;⁴⁰ any state-, county-, or municipal-owned RME would not be subject to PUC regulations.

RMEs owned by member-controlled non-profits or cooperatives likely also do not meet the statutory definition of “public utility.” To determine if an RME provides services for “public use” and is thus a “public utility,” PUC considers if the customers have sufficient control over the RME such that the RME operates to serve the customers, not the public, eliminating the need for PUC regulatory protections.⁴¹ For RMEs, this likely means member-owned cooperatives or member-controlled non-profits are not public utilities for services provided to owners and members who control these RMEs.⁴²

If the RME, however, is owned by a private corporation or non-member controlled nonprofit, it may be a public utility.

³⁶ [Haw. Rev. Stat. Ann. § 269-6 \(West\)](#).

³⁷ Service charges are important for CWSRF eligibility. Under federal requirements, RMEs would also need to identify a loan repayment source to receive assistance. EPA, [Funding Decentralized Wastewater Treatment Systems with the CWSRF](#), June 2016, 2; [33 U.S.C.A. § 1383\(d\)\(1\)\(C\)](#).

³⁸ [Haw. Rev. Stat. Ann. § 269-1 \(West\)](#).

³⁹ [Haw. Rev. Stat. Ann. § 342D-1 \(West\)](#).

⁴⁰ PUC does not have jurisdiction over any public utility “owned and operated by the State, or any county, or any political subdivision.” [Haw. Rev. Stat. Ann. § 269-31\(a\) \(West\)](#).

⁴¹ [Re Poipu Kai Water Reclamation Corp., No. 6939, 1991 WL 503068 \(July 22, 1991\)](#); See also [In the Matter of the Petition of Highlands Servs., LLC, No. 2007-0071, 2007 WL 2697158 \(May 3, 2007\)](#) (finding “the Water Association would not be a public utility since the owner-members of the association will...control over water service”).

⁴² See [In the Matter of the Petition of Castle & Cooke Resorts, LLC, Lanai Holdings, Inc., & Lanai Water Co., Inc., No. 2007-0232, 2007 WL 3245903 \(Sept. 28, 2007\)](#) (finding two wastewater treatment corporations were not public utilities because they provide services only to entities they own). See also [In the Matter of the Petition of Castle & Cooke Resorts, LLC, Lanai Holdings, Inc., & Lanai Water Co., Inc., No. 2007-0232, 2007 WL 3245903 \(Sept. 28, 2007\)](#) (citing *In re Hokuli'a Community Services, Inc.* which found “a nonprofit corporation that owns and operates a water system and reclamation facility for the sole use of its members that control the corporation is not a public utility” because of the customer’s control.).

Since customers of these RMEs lack control over the RME, PUC may decide that the RME serves public customers, not just its members, and that these customers need regulatory protections.⁴³ For non-member controlled or owned RMEs, PUC will consider whether the RME holds itself out as serving the public to determine if the RME is a “public utility.”⁴⁴ For example, if a small RME only serves a particular community’s individual wastewater system or community treatment system, then PUC may find that the RME only serves specific, individual households and not the public.⁴⁵ However, PUC may also decide that the RME is serving a portion of the public and is a public utility, especially if it is “holding itself out” as open to requests from prospective customers for RME service.⁴⁶ RMEs that are not member- owned or controlled are likely to be “public utilities” and therefore must comply with PUC utility rate regulations.

VII. Hawai‘i DOH Can Make Policy Changes to Expand CWSRF Eligibility for RMEs Without Changes to State Law or Regulations

Hawai‘i decentralized wastewater treatment performance requirements and utility regulations generally support RMEs, and policy proposals should therefore focus on improving access to public financial support for RME formation and activities, especially through the CWSRF. Importantly, many of the barriers could be addressed through changes to DOH policy, without requiring legislative or regulatory amendments.

Consistent with state law and DOH regulations, DOH could revise its IUP to expand CWSRF eligibility to include nonprofit and other privately structured RMEs. While the current IUP policy limits eligibility to counties, state law and DOH regulations define eligible entities broadly, consistent with federal law. This creates a clear opportunity for DOH to extend CWSRF eligibility through its IUP to non-profit entities, community groups, and even small businesses, and other entities that could function as RMEs.⁴⁷

DOH could also create programs to channel CWSRF funding to RMEs and households, including prioritizing principal forgiveness for decentralized wastewater projects. Counties, which are eligible for CWSRF support and responsible for cesspool conversions, could apply for funds to set-up sub-state revolving funds or to act as passthrough entities to provide loans to households or RMEs. DOH could provide counties both loans and principal forgiveness, and

⁴³ [Re Poipu Kai Water Reclamation Corp.](#), No. 6939, 1991 WL 503068 (July 22, 1991).

⁴⁴ [In the Matter of Maui Land & Pineapple Co., Inc.](#), No. 2025-0368, 2025 WL 3538796 at *15 (Dec. 1, 2025) (describing how PUC has “historically applied” both a “public use” test and a “control test” to determine public utility status and describing the determination as dependent on the “facts of the particular case.”).

⁴⁵ See [Application of Wind Power Pac. Invs.-III](#), 67 Haw. 342, 345 (1984) (quoting [73B C.J.S. Public Utilities § 3](#), “[t]he test is, therefore, whether or not such person holds himself out, expressly or impliedly, as engaged in the business of supplying his product or service to the public, as a class, or to any limited portion of it, as contradistinguished from holding himself out as serving or ready to serve only particular individuals.”). See also [In Re Waimea Wastewater Co., Inc.](#), No. 14413, 1995 WL 785933 (Dec. 11, 1995) (finding a wastewater treatment facility that served only a single hospital was not holding itself out to the public).

⁴⁶ [In the Matter of Maui Land & Pineapple Co., Inc.](#), No. 2025-0368, 2026 WL 128294, *12–*14 (Jan. 9, 2026). This is also true for cooperatives or member controlled nonprofits for services to non-members. [In the Matter of the Petition of Highlands Servs., LLC](#), No. 2007-0071, 2007 WL 2697158 (May 3, 2007).

⁴⁷ EPA, [Funding Decentralized Wastewater Treatment Systems with the CWSRF](#), June 2016, 1.

counties could then pass the principal forgiveness along to the ultimate recipient.⁴⁸ Other states have implemented comparable approaches, for example, Ohio provides CWSRF assistance in the form of both loans and principal forgiveness to local health departments that then deliver assistance to households,⁴⁹ including through sub-state revolving funds.⁵⁰ Although DOH does not currently appear to capitalize sub-state revolving funds, it may already have the authority to do so,⁵¹ even if the state legislature is taking a statutory approach to the creation of the cesspool conversion revolving fund.⁵² DOH could work with counties, or another state agency,⁵³ to develop a similar program and announce the program in an IUP or through rulemaking.

Additionally, DOH could adjust its project ranking criteria within the IUP to prioritize decentralized projects for CWSRF support.⁵⁴ This ranking system assigns each project points, and the highest scoring projects are prioritized for CWSRF assistance.⁵⁵ DOH already provides some priority points for “large capacity cesspool” projects,⁵⁶ but, through the IUP, could amend the scoring methodology to award more points and prioritize all conversions.⁵⁷

By contrast, some eligibility constraints would require statutory change. For example, current state law limits eligibility to a “county, state agency,

⁴⁸ Carollo and Harris & Associates, [Cesspool Conversion Finance Research Summary Report](#), State of Hawai‘i Department of Health, Jan. 2021, D-1. Washington’s CWSRF provides loans and forgiveness to Craft3, a pass through entity that then provides loans to homeowners. EPA, [Financing Decentralized Wastewater Treatment Systems](#), Jan. 2022, 20.

⁴⁹ Ohio Environmental Protection Agency, [Water Pollution Control Loan Fund Program Year 2024 Program Management Plan](#), G-4, Jan. 26, 2024.

⁵⁰ [Ohio Adm. Code Rule 3701-29-19\(H\)](#). See also EPA, [Financing Decentralized Wastewater Treatment Systems](#), Jan. 2022, 21 (discussing how CWSRF can capitalize sub-state revolving funds through loans and forgiveness and how “[m] any sub-state revolving funds” offer grants and loans).

⁵¹ Hawai‘i state law does not expressly say that DOH can capitalize sub-state revolving funds, the law broadly allows “projects and activities” allowed under federal law, see Section V. DOH may also “[p]erform any act considered reasonably necessary, advisable, or expedient for...the advancement of the purposes of [the Water Pollution Control Financing].” [Haw. Rev. Stat. Ann. § 342D-82 \(West\)](#). Notably, Ohio’s Department of Health adopted a regulation allowing itself to capitalize sub-state funds, [Ohio Adm. Code Rule 3701-29-19\(H\)](#), despite lacking express statutory authority, see [Ohio Revised Code Title 37 § 3718.02](#).

⁵² Section V.

⁵³ As the cesspool conversion revolving fund bill does, though RMEs are not eligible under the bill. Section V.

⁵⁴ [CWSRF IUP SFY 2025, FFY 2026, 13](#).

⁵⁵ [CWSRF IUP SFY 2025, FFY 2026, 17](#).

⁵⁶ [CWSRF IUP SFY 2025, FFY 2026, 19](#). The draft state fiscal year 2027 IUP maintains the same project ranking criteria. [CWSRF Draft IUP SFY 2026, FFY 2027, 16–18](#).

⁵⁷ State law provides that the director “certifie[s]” a project has “priority over other eligible projects.” [Haw. Rev. Stat. Ann. § 342D-87 \(West\)](#). DOH regulations do not define the project ranking criteria; this suggests that the priority scoring policy is developed through the IUP.





or private person,” which may exclude certain public corporation models that could function as RMEs, such as Improvement Districts or Community Facilities Districts. These districts are created by counties, but encompass private property, leaving it unclear if they currently qualify as eligible recipients under either state law or IUP policy.⁵⁸ Amending the statute to broaden eligibility by removing the word “private” would clarify and expand the range of entities able to access CWSRF support. This way the statute would include the whole scope of statutorily defined persons, which includes public corporations and other entities.⁵⁹ This is especially significant since analysis of cesspool conversions in Hawai‘i have already identified Improvement Districts and Community Facilities Districts as entities that could support community level conversions, own facilities, and otherwise function as RMEs.⁶⁰

⁵⁸ See [Haw. Rev. Stat. Ann. § 46-80.5 \(West\)](#) (describing special improvement districts); [Haw. Rev. Stat. Ann. § 46-80.1 \(West\)](#) (describing community facilities districts).

⁵⁹ Section V.

⁶⁰ County of Hawai‘i, [Hawai‘i County Cesspool Conversion Task Force Report](#), Dec. 2025, 27, 37–38, 41, 42. See also Carollo and Harris & Associates, [Cesspool Conversion Finance Research Summary Report](#), State of Hawai‘i Department of Health, Jan. 2021, 17.

VIII. Conclusion

RMEs represent a scalable pathway for Hawai'i to accelerate cesspool conversion, aggregate projects to reduce costs, and sustainably manage wastewater systems. While state law and regulations generally support the formation and operation of RMEs, current CWSRF program policies restrict their access to financing, constraining their ability to support conversions at scale.

These constraints are primarily a matter of policy, not law. DOH can take near-term action by updating its IUP to expand eligibility beyond county-owned systems, allowing nonprofit and other RME models to directly access CWSRF financing for both planning and implementation. DOH can also use its existing authority to establish pass-through financing or sub-state revolving fund programs, leveraging counties or other intermediaries, and prioritize decentralized wastewater projects to support cesspool conversion goals through revised project ranking criteria.

Targeted statutory changes could further strengthen the approach by clarifying eligibility for public corporation models that could function as RMEs. Together these policy and legislative actions would unlock more flexible and scalable financing pathways, enabling RMEs to aggregate projects, reduce costs and expand affordability. Without these changes, Hawai'i risks underutilizing available federal resources and leaving cost efficiencies on the table.

