

**DRAFT RULES LAST MODIFIED ON 10/14/10
THESE RULES HAVE NOT BEEN ADOPTED BY THE COUNTY ENGINEER**

**OFFICE OF THE COUNTY ENGINEER
COUNTY OF KAUA‘I
DEPARTMENT OF PUBLIC WORKS
RULES PERTAINING TO THE
IMPLEMENTATION OF ORDINANCE 885 (PLASTIC BAG REDUCTION)**

CHAPTER I. CHECKOUT BAGS

Section 1. Scientific and Technical Standards for Biodegradable Bags. Pursuant to County of Kaua‘i Ordinance 885, the County Engineer hereby sets forth the scientific and technical metrics for determining a permitted biodegradable checkout bags for use at retail establishments:

- A. Scientific considerations for determining composition of the bag: On a molecular level, polymers must contain no monomers derived from fossil fuel products.
- B. Scientific considerations for determining rate of decomposition of the bag: Will decompose in a natural setting at a rate comparable to other biodegradable materials such as paper, leaves, and food waste: allowable periodic consideration for decomposition time on the order of months and years and not decades or centuries.

Section 2. Bags Classified as Biodegradable Checkout Bags.

- A. Bags with the following “stamps” or Certifications shall, for enforcement purposes, be automatically considered Biodegradable Checkout Bags for the purposes of Ordinance 885:

None.
- B. Bags with from the following manufactures shall, for enforcement purposes, be automatically considered Biodegradable Checkout Bags for the purposes of Ordinance 885:

None.

Section 3. Application by Retail Establishment for New Classification and Inclusion of other Biodegradable Checkout Bags in these Administrative Rules.

Any candidate bags for classification and inclusion as a biodegradable checkout bags shall be vetted by the following process:

- A. A retail establishment shall complete the standard application form provided by the County of Kaua‘i Department of Public Works Solid Waste Division with the following information:
 - 1. A chemical inventory or environmental declaration of the candidate checkout bag, certification or “stamp;”
 - 2. Whether the candidate checkout bag, certification or “stamp” includes any polymers derived from fossil-fuels;
 - 3. The address and contact information for the manufacturer of the candidate checkout bag or relevant certification agency;

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4. The address and contact information for the applicant; and
 5. Provide at least 3 samples of the candidate checkout bag.
- B. The County Engineer shall review the application, and within 30 days, serve a written recommendation outlining whether the candidate checkout bag, certification or “stamp” meets the requirements of Ordinance 885 and these rules.
- C. Should the County Engineer deny the application or adoption of amended rules, the retail establishment may request a contested case hearing pursuant to Hawai‘i Revised Statutes Chapter 91.
- D. Should the County Engineer recommend adoption of the candidate checkout bag, certification or “stamp,” the County Engineer shall initiate the rules amendment process pursuant to Hawaii Revised Statutes Chapter 91.

Section 4. Scientific and Technical Interpretations by the County Engineer for Recyclable Paper Bags. The County Engineer hereby sets forth its interpretation of the scientific and technical metrics defining a permitted recyclable paper bags for use at retail establishments in order to guide retailers’ compliance with Ordinance 885:

- A. “Old Growth Fiber” means fiber derived from “Old Growth Forests.” For the purpose of County Engineer interpretation, Old Growth Fibers are defined as either having a certification from the manufacturer printed on the bag attesting to the absence of Old Growth Fiber content, or evidence that the fibers in the bag are from Old Growth Forests which are:
1. Largely naturally regenerated;
 2. Less than 30% of the stand/forest area has been logged or cleared within the past century;
 3. Relatively undisturbed such that human activities have not significantly altered native forest structure, composition or function;
 4. Dominated by native tree species;
 5. Relatively unmanaged although they may suffer from a history of fire suppression or grazing; and
 6. Composed of individual or stands of trees of varying ages, with old growth components constituting at least half of the stand or forest unit, and having at least four trees per acre over 150 years of age;
- B. “One hundred percent (100%) recyclable” means the bag is certified by the manufacturer and printed on the bag, or where evidence presented to the County Engineer can show all the bag’s components can be passed through another production cycle to manufacture another product; and
- C. “Contains a minimum of forty percent (40%) post-consumer recycled content” means the bag is certified by the manufacturer and printed on the bag, or where evidence presented to the County Engineer can show the bag’s components are derived from materials previously used by a consumer.

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Section 5. Identification of Recyclable Paper Bags.

- A. Any Recyclable Paper Bag must be printed at least once on the outside with the words "Reusable" and "Recyclable" at a minimum height of 1/8".

**CHAPTER II. HEARINGS PROCEDURES RELATED TO ENFORCEMENT OF
ORDINANCE 885 AND SECTION 3(C) OF THESE RULES**

Any appeal for any citations issued pursuant to Ordinance 885, or appeals of the County Engineer's decision pursuant to Section 3(C) of these rules, shall follow:

Section 1. Petition. Petitions shall be filed within thirty (30) days of the alleged adverse decision. The petition shall be filed with the Department of Public Works Solid Waste Division and shall consist of:

- A. Name, address and telephone number of the petitioner.
- B. Nature of petitioner's interest and the reasons for requesting a formal hearing.
- C. A complete statement of the relevant facts giving rise to the petitioner's request.
- D. Position or contention of the petitioner.
- E. Petition for a hearing.

Section 2. Setting, approval, rejection. Petitions for hearing shall either be forwarded for hearing, or rejected for incompleteness in writing by the County Engineer or designee thirty (30) days from filing. Once deemed complete, petitions must be forwarded to a Board or Commission authorized by ordinance to conduct the hearing or a Hearings Officer within fourteen (14) days.

Section 3. Appointment of Hearings Officer. The County Engineer shall appoint a hearings officer within seven (7) days of the petition being deemed complete.

Section 4. Notice. The hearings officer, board or commission shall, within fifteen (15) days prior to the hearing, notify the parties of the hearing in writing, by registered or certified mail with return receipt requested. If service by registered or certified mail cannot be made because of refusal to accept service or because the hearings officer, board or commission have been unable to ascertain the address of the party after reasonable and diligent inquiry, a notice of hearing may be given to the party by publication at least once in each of two successive weeks in a newspaper of general circulation. The last published notice shall appear at least fifteen (15) days prior to the date of the hearing.

Section 5. Procedure, Rules. In the hearing, the following rules and procedures shall apply:

- a. The hearings officer, board or commission shall determine the order in which the parties to the proceeding shall present their case. Any motions may be heard before commencement of the primary hearing.
- b. Any procedure may be modified or waived by stipulation of the parties and informal disposition may be made by stipulation, agreed settlement, consent order, or default.

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- c. The hearings officer, board or commission may at any time ask for or seek additional information or require the petition to provide additional information.
- d. Any other relevant procedural requirements pursuant to Hawai'i Revised Statutes Chapter 91.
- e. Roberts rules of order shall govern in hearings involving a board or omission.

Section 6. Decision and Order. Every decision and order rendered by the hearings officer, board or commission, shall be in writing or stated in the record. Parties shall be notified of the hearings officer, board or commission decision. In the case where a decision and order is rendered by a hearings officer, the document must be approved by the County Engineer and served upon all parties.

BY ORDER OF THE COUNTY ENGINEER OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I THIS _____ DAY OF _____, 2011. These shall become effective ten (10) days upon filing with the County Clerk of the County of Kaua'i.

DONALD M. FUJIMOTO
County Engineer

APPROVED AS TO LEGALITY AND FORM:

ALFRED B. CASTILLO, JR.
County Attorney

APPROVED THIS _____ DAY OF _____, 2011.

BERNARD P. CARVALHO, JR.
Mayor of the County of Kaua'i

I HEREBY CERTIFY THAT THE FOREGOING RULES WERE RECEIVED AND FILED IN MY OFFICE THIS _____ DAY OF _____, 2011.

PETER A. NAKAMURA
County Clerk

PUBLIC NOTICE: October 15, 2010
PUBLIC HEARING: January 11, 2011