



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION
COMMITTEE ON WATER, LAND, & OCEAN RESOURCES

HB834, Relating to Water Quality Standards

Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health

February 10, 2009

9:30 a.m.

Bill No. HB 834

Support Y N

Date 2/10

Time 1000

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Type 1 2 WI

1 **Department's Position:** The Department supports this bill.

2 **Fiscal Implications:** None for the Department.

3 **Purpose and Justification:** This bill revises by statute the water quality standards for bacteria in
4 marine waters and the water quality standards for chlordane and dieldrin.

5 The Department agrees with the concept of changing the state water quality standards for most
6 toxic pollutants by tying them to the national criteria currently recommended by the U.S. Environmental
7 Protection Agency (EPA). We recommend covering more than chlordane and dieldrin, as the current
8 bill does. We do suggest some changes and exclusions, explained below. The Department also agrees
9 with amending state water quality standards for bacteria indicators for recreational water to be consistent
10 with latest EPA standards, with changes to the identification of recreational waters, also explained
11 below.

12 The Department has been working on amendments to its water quality standards rules, Hawaii
13 Administrative Rules (HAR) chapter 11-54, but the current first set of amendments is narrower than this

1 bill, and a second set of amendments to cover all toxic pollutants will exceed the scope of this bill will
2 take much longer. Our current first set will take care of a typographical error in the chlordane standard
3 and to conform to federal standards for the water bacterial indicator within 300 meters of shore, but
4 changes to update all the toxic pollutants which we want to address, or even just the chlordane and
5 dieldrin standards, may take several months.

6 The Department suggests amending Sections 1-3, and 6 of this bill and attaches proposed
7 language.

8 In Section 1, we clarify that the current federal toxic pollutant standards for fish consumption
9 also cover inland waters, as do the current department standards for toxic pollutants. Section 1 of the
10 current bill refers to marine waters, but Section 2 changes standards that now cover all waters. We also
11 clarify that numerical criteria should support both designated and existing uses to more clearly adhere to
12 federal requirements.

13 In Section 2, we propose to change the State water quality standards for most toxic pollutants by
14 tying them to the 2006 national criteria currently recommended by the U.S. Environmental Protection
15 Agency (EPA). These federally-recommended toxic pollutant criteria provide substantial and sufficient
16 public health protection for fish consumption, and are developed with nationwide resources and
17 expertise that cannot be matched at the state level. For this reason, we suggest that the bill also include
18 federally-recommended water quality criteria for the protection of aquatic life (acute and chronic effects
19 in fresh water and salt water). If there are public concerns about the criteria that would be adopted for
20 specific pollutants, we encourage them to be brought forward as soon as possible during this legislative
21 process. We recommend that the amended water quality standards not include:

22 1) EPA criteria for specified metals, because Hawaii specific research supported the current
23 standards, and we need time to evaluate whether changes are appropriate; and

1 2) Pollutants for which current water quality standards apply but for which there is no
2 corresponding federal criterion, so the lack of a federal criterion does not impliedly repeal
3 our current standard.

4 The Department supports Section 3 of this bill. It includes a new 33 meter depth limit designation
5 for coastal recreational waters, creates a class of infrequent use recreational waters and sets its shore
6 most boundary 500 meters from shore, and changes bacterial indicator criteria to match federal
7 regulatory levels. We understand that most recreational diving activity occurs within thirty-three meters
8 of the surface, and that most recreational surfing and swimming takes place within five hundred meters
9 of shore. Given the low degree of scientific confidence in the validity of federal indicator bacteria
10 criteria in general, and State of Hawaii participation in nationwide efforts to improve these criteria, it is
11 in the best interests of the State, EPA, and the scientific community for Hawaii to maintain consistency
12 with the current national criteria, until new indicators or approaches can be promulgated by EPA. In the
13 nineteen years since the current state criteria were adopted, the Department has not seen any evidence to
14 suggest that the current federal standard of a geometric mean of thirty-five colony forming units per one
15 hundred milliliters is any less protective of public health than the current state standard of a geometric
16 mean of seven colony forming units per one hundred milliliters.

17 In Section 3 we also add a subsection on monitoring to reduce potential confusion and conflict
18 with existing Hawaii Administrative Rules, HAR chapter 11-54, and facilitate the Department's
19 implementation of the proposed changes.

20 For Section 6 we add language clarifying that the state review and adoption of a change in
21 standards for one pollutant, with EPA approval, does not repeal standards for all other pollutants
22 covered by the bill.

23 Under federal law, EPA must approve state water quality standards before they can be
24 implemented by states and EPA to meet federal requirements. EPA requirements appear at 40 C.F.R.

1 Parts130 and 131. The Department will work with EPA following the passage of this bill to achieve an
2 approval agreement.

3 Thank you for the opportunity to testify.

1 PROPOSED H.B. 834, H.D. 1

2 RELATING TO WATER QUALITY STANDARDS

3 *Proposed changes to SECTIONS 1-3, & 6 only*

4
5 SECTION 1. The purpose of this Act is to revise certain
6 state water quality standards for inland and marine waters to conform
7 to levels recommended by the State of Hawaii and the United States
8 Environmental Protection Agency. The legislature finds that these
9 revisions are important to the economic or social development of the
10 State, and that these revised standards are adequate to fully protect
11 the designated uses and existing uses of the State's inland and
12 marine waters.

13
14 SECTION 2. In accordance with Sections 303(c) and 304(a) of
15 the Federal Water Pollution Control Act of 1972, as amended, and the
16 United States Environmental Protection Agency National Recommended
17 Water Quality Criteria, the following water quality criteria
18 [standards] in the Current National Recommended Water Quality
19 Criteria for Toxic Pollutants (including the applicable footnotes and
20 appendices), are hereby adopted by the State as water quality
21 standards, with exceptions as indicated:

22 (A)

23 [Chlordane et seq. deleted]

1 For all Priority Pollutants and Non-Priority Pollutants,
2 all recommended water quality criteria for the protection
3 of aquatic life in surface water (acute and chronic effects
4 in fresh water and salt water), and for the protection of
5 human health for consumption (organism only), except those
6 nationally recommended water quality criteria for Arsenic,
7 Cadmium, Chromium III, Chromium VI, Copper, Lead, Mercury,
8 Nickel, Selenium, Silver, and Zinc.

9 Where there is no national recommended criterion promulgated for a
10 Priority or Non-Priority Pollutant, existing provisions of Chapter
11 11-54, Hawaii Administrative Rules, for that pollutant are not
12 thereby repealed or deemed inconsistent with this Act and remain in
13 effect until amended by the State.

14 [(B) Dieldrin *et seq.* deleted]

15
16 SECTION 3. *Add subsection:*

17 (d) At locations where sampling is less frequent than five
18 samples per twenty-five to thirty days, no single sample shall exceed
19 the single sample maximum nor shall the geometric mean of these
20 samples taken during the thirty-day period exceed thirty-five colony
21 forming units per one hundred milliliters.

22
23 SECTION 6. This Act shall take effect upon approval. The
24 specific water quality standards prescribed herein shall take effect

1 upon their approval by the United State Environmental Protection
2 Agency. [This] The provisions of this Act for any particular
3 pollutant or indicator bacteria, shall be repealed upon the approval
4 by the United State Environmental Protection Agency of water quality
5 standards for the pollutant [and] or indicator organisms identified
6 herein, following the State's review and adoption of water quality
7 standards for that pollutant or indicator organism pursuant to
8 section 303 of the Clean Water Act.

Cyndi Apana

Bill No. 834

From: Hans Krock [hans.krock@deepoceanhawaii.com]
Sent: Monday, February 09, 2009 9:37 PM
To: EEPtestimony
Cc: Tanimoto, Ross
Subject: Testimony on HB 834, February 10, 2009 at 9:30 am

Support **Y N**
Date 2-10-09
Time _____

FEBRUARY 10, 2009

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Testimony on HB 834 regarding the need to update the Water Quality Standards of Hawaii

WI

Submitted by:
Hans Krock Ph.D., P.E.
Emeritus Professor of Ocean and Resources Engineering
808 228 2233

I participated in the last significant revision of the State of Hawaii Water Quality Standards in 1977. I was responsible for most of the numerical values and the statistical form of those standards that had large natural variations. At the time of the 1977 revisions the available data base was not very extensive and the recommendation was that the standards should be periodically revised to keep them up to date, to correct any errors, and to reflect any new understanding of environmental processes. The frequency of such revisions was thought to be every three to ten years depending on need.

In fact, the standards have had no significant revisions since 1977 even though (1) the data base has grown in size and accuracy, (2) several errors have been identified, and (3) our understanding of environmental processes has evolved to the point where blind application of the old standards will actually lead to significant environmental harm.

The EPA has recently promulgated water quality standards that are more up to date and that should be taken into account in revising the standards in Hawaii. This especially relates to the standards for the toxicants chlordane and dieldrin as well as to the standards for nutrients. It should also be noted that the Hawaiian Water Quality Standards do not cover the area of the ocean below the top of the thermocline. All these factors are relevant to the evaluation of the C&C of Honolulu deep discharges from the treatment plants at Sand Island and Honouliuli.

Thank you for this opportunity to testify.
The University of Hawaii is not responsible for anything I write or say.



Hawaii's Thousand Friends

25 Malunui Ave., Suite 102., PMB 262 • Kailua, HI 96734 • Phone/Fax: (808) 262-0682 E-mail: htf@lava.net

Committee is requesting original and 1 copy.

Hermina Morita, Chair
Committee on Energy and Environmental Protection

Ken Ito, Chair
Committee on Water, Land, and Ocean Resources

HB834, Relating to Water Quality Standards
February 10, 2009, 9:30 a.m., State Capitol Room 325

Hawaii's Thousand Friends
Fred Madlener, Board Member

Committee Chairs and Members:

Hawaii's Thousand Friends has been in the federal courts since the early 1990's to require the City and County of Honolulu to clean up its sewage outfalls. There is an on-going water quality case that we are a party to, that allows us to intervene on the side of EPA, the U.S. Department of Justice, and the State of Hawaii Department of Health in their dispute with the City. We are asking both of your Committees to not intervene at this stage of the litigation, now approaching resolution, by setting your own water quality standards in this Bill. Such an intervention brings into play a whole range of Federal procedures, most of which you have had no time to consider in depth. There must be, and there is not, an administrative record to support the relaxation of the standards proposed by the Bill. The legislature cannot do this, and EPA cannot approve it without record support. This Bill ignores that Hawaii Water Quality Standard for pesticides were intentionally set at three times more strict than EPA's criteria to account for the higher levels of fish consumed in Hawaii.

Furthermore, tourism is such an important part of our commercial life here that it makes no sense to downgrade the quality of the near-shore waters of Waikiki so that instead of nine persons getting sick from swallowing sea water that contains seven clumps of enterococcus per 100 milliliters, nineteen persons will get sick from swallowing a like amount of water with thirty five clumps of enterococcus, the proposed new standard.

Bill No. HB 834

Support Y N

Date 2/10

Time 902

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