
A BILL FOR AN ACT

RELATING TO NONPOINT SOURCE POLLUTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in the 1970's, a
2 lack of environmental regulation and enforcement led to the
3 dumping of pollutants and hazardous materials by numerous
4 entities and that some form of governmental oversight and
5 enforcement was necessary to deter and prevent these threats to
6 clean drinking water and habitats.

7 The legislature also finds that some four decades after the
8 enactment of historic environmental legislation and clean water
9 protections, the environmental movement has, in great part,
10 succeeded. Environmental protection has become part of the
11 popular culture, to the point where those who would be labeled
12 polluters four decades ago are today stewards of the
13 environment.

14 The legislature further finds that the adversity brought
15 about by the global economic downturn also provides an
16 opportunity to augment the practices of state government in such
17 a way as to create efficiencies and reduce costs while still



1 meeting the goals of a particular policy. Such is the case with
2 the Department of Health's Clean Water Branch.

3 The Department of Health's Clean Water Branch is
4 responsible for regulating the federal Clean Water Act. More
5 specifically, the Clean Water Branch is responsible for
6 reviewing applications and granting permits for potential sites
7 of nonpoint source pollution, such as construction sites and
8 manufacturing/production facilities, auditing of those sites and
9 facilities, and enforcement of penalties on those that violate
10 the Clean Water Act's standards. Nevertheless, as is the case
11 in so many other areas of government, resources are limited,
12 leading to irregular and inconsistent inspections, enforcement,
13 and overall, less than ideal environmental stewardship.

14 Part of the solution to limited resources for the provision
15 of government services is cooperation with the private sector.
16 Although self-monitoring may appear counter-intuitive, it is an
17 accepted course in many state functions, such as the many
18 professional groups that come under the umbrella of the
19 department of commerce and consumer protection. While the
20 establishment of regulations required by federal law might be
21 considered technically different from the adaptation of
22 professional standards to promote ethical conduct, the



1 underlying principle of self-monitoring and cooperation between
2 government and the private sector to the end of furtherance of a
3 policy or cause is nothing new. The driving force behind the
4 concept is the leveraging of all available resources with an
5 agenda based in a sense of common purpose.

6 The legislature further finds that the benefits to
7 cooperation in this case are many. Cooperative self-monitoring
8 will also provide a mechanism by which real-time electronic
9 transmission of data related to regulated sites and facilities
10 to regulatory authority can occur. This information will
11 include permit applications, best management practices and
12 related attachments associated with these applications, and site
13 and facility inspection results. Thus, regulatory agencies will
14 be more readily capable of addressing the constraints of limited
15 public resources while continuing to fulfill their role in the
16 common purpose of stewardship of the environment.

17 It stands to reason that if permit applications for
18 construction projects are reviewed in a more effective manner,
19 projects can be initiated or implemented faster, trades go to
20 work faster, salaries get paid faster, supplies get purchased
21 faster, and personal income and general excise taxes get paid



1 faster, leading to an increase in tax revenues in any given
2 fiscal year due to an increased number of projects underway.

3 The legislature also finds that cooperation with the
4 private sector with respect to self-monitoring is consistent
5 with long-standing U.S. Environmental Protection Agency (EPA)
6 policy. In Volume 51, Number 131, of the Federal Register dated
7 July 9, 1986, the EPA announced a final policy statement in
8 which it submitted that, "[E]nvironmental audits can improve
9 compliance by complementing conventional federal, state and
10 local oversight [. . .] Environmental auditing has developed for
11 sound business reasons, particularly as a means of helping
12 regulated entities manage pollution control affirmatively over
13 time instead of reacting to crises. Auditing can result in
14 improved facility environmental performance, help communicate
15 effective solutions to common environmental problems, focus
16 facility managers' attention on current and upcoming regulatory
17 requirements, and generate protocols and checklists which help
18 facilities better manage themselves. Auditing also can result
19 in better-integrated management of environmental hazards, since
20 auditors frequently identify environmental liabilities which go
21 beyond regulatory compliance [. . .] EPA encourages regulated
22 entities to adopt sound environmental management practices to



1 improve environmental performance [. . .] Audits can be
2 conducted effectively by independent internal or third party
3 auditors."

4 This policy is incorporated and supported in a 1997 EPA
5 document entitled "Voluntary Environmental Self-Policing and
6 Self-Disclosure Policy", where the EPA states, "One of the
7 Environmental Protection Agency's most important
8 responsibilities is obtaining compliance with federal laws that
9 protect public health and safeguard the environment. That goal
10 can be achieved only with the voluntary cooperation of thousands
11 of businesses and other regulated entities subject to these
12 requirements [. . .] the Agency recognizes that we cannot
13 achieve maximum compliance without the cooperation of a
14 regulated community willing to act responsibly by detecting,
15 disclosing, and correcting violations. Already, regulated
16 entities have many compelling incentives to implement
17 environmental management/auditing systems, as noted in EPA's
18 1986 auditing policy."

19 This policy was further updated and strengthened in Volume
20 65, Number 70, of the Federal Register dated April 11, 2000,
21 where the EPA issued a final policy statement in which it
22 proposed, among other things, that "[t]he purpose of the Policy



1 is to enhance protection of human health and the environment by
 2 encouraging regulated entities to voluntarily discover,
 3 disclose, correct and prevent violations of Federal
 4 environmental law [. . .] The revised Policy reflects EPA's
 5 continuing commitment to encouraging voluntary self-policing
 6 while preserving fair and effective enforcement."

7 Therefore, it is the purpose of this Act to facilitate the
 8 cooperation between the department of health and the private
 9 sector in order to further promote the purposes of the Clean
 10 Water Act while providing a better business environment.

11 SECTION 2. Chapter 342E, Hawaii Revised Statutes, is
 12 amended by adding a new part to be appropriately designated and
 13 to read as follows:

14 "PART

15 HAWAII TASK FORCE FOR THE MODERNIZATION OF

16 CLEAN WATER ACT COMPLIANCE

17 "§342E-A Hawaii Task Force for the Modernization of Clean
 18 Water Act Compliance; purpose. (a) There shall be a

19 voluntary cooperative program within the department known as the
 20 Hawaii Task Force for the Modernization of Clean Water Act

21 Compliance. The purpose of the Hawaii Task Force for the
 22 Modernization of Clean Water Act Compliance shall be to manage



1 or mitigate nonpoint source pollution and maintaining compliance
2 with adopted department rules or standards for nonpoint source
3 pollution management through the use of public-private
4 partnerships to supplement and augment the public purposes of
5 this chapter with private resources.

6 **§342-B** **Membership.** (a) The membership of the Hawaii
7 Task Force for the Modernization of Clean Water Act Compliance
8 shall consist of eleven members, which shall include the
9 following:

- 10 (1) A representative from the U.S. Environmental
11 Protection Agency;
- 12 (2) The director of the department, or his designee;
- 13 (3) The director of the department of transportation,
14 or his designee
- 15 (4) A representative from a county agency responsible
16 for environmental regulation;
- 17 (5) A representative from a county agency responsible
18 for transportation management, provided that this
19 representative shall not be from the same county
20 as the representative from a county agency
21 responsible for environmental regulation;



1 (6) A member of the house of representatives, as
2 selected by the speaker of the house of
3 representatives;

4 (7) A member of the senate, as selected by the senate
5 president;

6 (8) Four persons who have volunteered to be regulated
7 through the Hawaii Task Force for the
8 Modernization of Clean Water Act Compliance, as
9 selected by the persons regulated through the
10 Hawaii Task Force for the Modernization of Clean
11 Water Act Compliance.

12 (b) The members of the task force shall serve six-year
13 staggered terms; provided that the initial appointments shall be
14 as follows:

15 (1) The representative from a county agency
16 responsible for transportation management to be
17 appointed for three years;

18 (2) Two members of the persons who have volunteered
19 to be regulated through the Hawaii Task Force for
20 the Modernization of Clean Water Act Compliance
21 to be appointed for three years;



1 (3) The representative from a county agency
2 responsible for transportation management to be
3 appointed for four years;

4 (c) The members of the task force shall select a
5 chairperson and vice chairperson from among its members. Six
6 members shall constitute a quorum, whose affirmative vote shall
7 be necessary for all actions taken by the board. Members shall
8 receive no compensation for services, but shall be entitled to
9 necessary expenses, including travel expenses, incurred in the
10 performance of their duties.

11 §342-C Functions, powers and duties.

12 (a) The Hawaii Task Force for the Modernization of Clean
13 Water Act Compliance shall be responsible for the promulgation
14 of standards, rules, and procedures for managing or mitigating
15 nonpoint source pollution or maintaining compliance with adopted
16 department rules or standards for nonpoint source pollution
17 management that are at least equal to those promulgated by the
18 department. These standards, rules, and procedures shall be
19 promulgated to maximize the use of public-private partnerships
20 to supplement and augment the public purposes of this chapter
21 with private resources to create greater efficiencies in
22 effecting the public purposes of this chapter, including:



1 (1) uniform auditing and enforcement protocols and
2 standards, including uniform training of auditors
3 and field agents;

4 (2) use of third-party agents to audit sites of
5 possible nonpoint source pollution; and

6 (3) data collection and transmission features that
7 assist the department in meeting any state or
8 federal reporting guidelines with respect to
9 nonpoint source pollution, and access rights to
10 the data.

11 (b) The task force may establish a fee to persons who opt
12 to be regulated by the Hawaii Task Force for the Modernization
13 of Clean Water Act Compliance. All fees shall be used for the
14 purposes of the Hawaii Task Force for the Modernization of Clean
15 Water Act Compliance, as determined by the task force. Matters
16 relating to the initial setting of the fee amount, increases or
17 decreases in the fee amount, or uses of fees, shall require the
18 consent of at least a two-thirds vote of the members the task
19 force is entitled to.

20 SECTION 3. Section 342E, Hawaii Revised Statutes, is
21 amended by adding a new definition to be appropriately inserted
22 and to read as follows:



1 ""Cooperative program" means a partnership between a person
2 and the department that furthers the priorities, mission, and
3 duties of the nonpoint source pollution management and control
4 program, or its successor, through the use of private
5 resources."

6 SECTION 4. Section 342E-3, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "[§342E-3] **Powers and duties of the director.** (a) In
9 addition to any other power or duty prescribed by law, the
10 director shall:

- 11 (1) Reduce, control, and mitigate nonpoint source
12 pollution in the State;
- 13 (2) Adopt rules under chapter 91 necessary for the
14 purposes of this chapter, which may include water
15 quality standards for specific areas, types of
16 nonpoint source pollution discharges, or management
17 measures in the control of water pollution, allowing
18 for varying local conditions;
- 19 (3) Develop plans, recommendations, and policies, and
20 provide other support to further the State's capacity
21 to carry out the requirements of any federal law,



- 1 rule, or regulation pertinent to the management or
2 mitigation of nonpoint source pollution;
- 3 (4) Work cooperatively with other state, county, and
4 federal agencies, to facilitate the monitoring of and
5 update the list of waters in the State that cannot
6 reasonably be expected to attain or maintain state
7 water quality standards and goals established under
8 the federal Water Quality Act of 1987 (P.L. 100-4)
9 without additional action to control nonpoint source
10 pollution;
- 11 (5) Identify those categories of nonpoint sources that add
12 significant pollution to the state waters identified
13 under paragraph (4);
- 14 (6) Facilitate implementation of the best management
15 practices, programs, and measures to control each
16 category of nonpoint source pollution identified under
17 paragraph (5), and encourage nonpoint source pollution
18 mitigation practices including, but not limited to,
19 the use of non-hazardous substances in the household
20 and agroforestry management and the use of cooperative
21 programs to further the purposes of this chapter;



- 1 (7) Identify public and private sources of expertise,
2 technical assistance, financial assistance,
3 educational assistance, training, and technology
4 transfer;
- 5 (8) Convene statewide and regional public forums involving
6 the general public, the regulatory community, and
7 businesses and industries that may contribute to
8 categories of nonpoint source pollution for the
9 purpose of establishing plans, and developing
10 management strategies and other mitigation measures to
11 control and manage nonpoint source pollution;
- 12 (9) Provide funding for projects to demonstrate the best
13 available technology and best management practices for
14 preventing and mitigating nonpoint source pollution;
- 15 (10) Provide funding for public initiative projects to
16 encourage education and prevention measures relating
17 to nonpoint source pollution;
- 18 (11) Propose legislation, alternate funding mechanisms, and
19 new programs to improve the State's capacity to
20 mitigate nonpoint source pollution; and
- 21 (12) Review environmental assessments and environmental
22 impact statements as defined under section 343-2 for



1 the purposes of commenting on the effects that a
2 proposed action would have on the level of nonpoint
3 source pollution generated in an area."

4 SECTION 5. New statutory material is underscored.

5 SECTION 6. This Act shall take effect upon its approval.

6

7

INTRODUCED BY:



A handwritten signature in black ink, appearing to read 'A. H. ...', is written over a horizontal line.

JAN 27 2010



Report Title:

Nonpoint source pollution

Description:

Facilitates cooperation between the public and private sector to further the purposes of the Clean Water Act.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

