



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 hawaii.chapter@sierraclub.org

LATE TESTIMONY Bill No. 834

Support Y  N

Date 2/9/09

Time 9:00p

HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION  
HOUSE COMMITTEE ON WATER, LAND, & OCEAN RESOURCES Cat. AF AS AX  BC

February 10, 2009, 9:30 A.M.

Type 1  2 WI

(Testimony is 2 pages long)

## TESTIMONY IN OPPOSITION OF HB 834

Chair Morita, Chair Ito, and members of the Committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, strongly opposes HB 834, which lowers the state water quality standards for marine waters to assist the City and County of Honolulu with the dumping of its effluent.

As an initial matter, it should be noted Hawai'i's water quality standards can not be revised for purposes of the federal Clean Water Act unless Hawai'i also obtains U.S. Environmental Protection Agency (EPA) approval for this revision pursuant to CWA section 303(c), 33 U.S.C. § 1313(c) and 40 C.F.R. part 131, subpart C. *See, e.g., Alaska Clean Water Alliance v. Clark*, No. C96-1762R, 1997 U.S. District LEXIS 11144 (W.D. Wash. July 8, 1997) (new or revised state water quality standards become effective only after EPA has completed its review process and approved the standards under the CWA); 40 C.F.R. § 131.20(c). Thus, this bill will have no benefit to the City of County of Honolulu during its appeal of the recent waiver denial. Moreover, it may involve this State in unnecessary litigation.

Further, the EPA will *not* accept the water quality standards specified in HB 834. The EPA's regulations mandate a quasi-adjudicative process that includes formal notice to the public and an opportunity for comment before a state amends its water quality standards. 40 C.F.R. § 131.10(e). These regulations further mandate the development of a specific factual record to support certain mandatory findings before water quality standards can be relaxed in the fashion that the bills propose. *See, e.g.,* 40 C.F.R. § 131.10(g), (h). The proposed bill does not produce a factual record to support specific findings, as is the case in an adjudication or agency rulemaking. For example, HB 834 effectively designates all "[c]oastal recreation waters between five hundred meters and three miles from shore as infrequent use coastal recreation waters . . ." without any factual basis. Thus, even if HB 834 were to be enacted, the EPA could not accept it

based on its own regulations. Quite simply, the legislative process is an improper vehicle for this type of process.

Moreover, we question the wisdom of the legislature even proceeding down this road. With all due respect, this body does not have the expertise or specialized knowledge necessary to essentially take over a specialized area of public health. For example, Hawai`i's administrative rules deliberately ensure greater protection than in the federal rules based on the greater use of the ocean resources by Hawai`i's residents. As noted in the attached Declaration of Laurence K. Lau, the Deputy Director of Health for the State of Hawai`i Department of Health, Hawai`i's Water Quality Standards for "fish consumption standards are 3.1 times more stringent than the EPA Criteria, because the average daily consumption of fish locally was estimated to be approximately 3.1 times higher than the average underlying the EPA Criteria."

Nor is there any evidence to support a finding that recreational use is "low" in waters beyond 500 meters. To the contrary, it would seem like an opposite finding is required?

There is one specific example of a mistaken calculation for chlordan (0.000016 micrograms per liter instead of 0.00016 micrograms per liter). This mistake has been acknowledged by the EPA and the Department of Health has publicly stated it will proceed with revising this number. The ramifications of this "mistake" are slight and do not necessitate the legislature making sweeping changes to our water quality standards.

Before we rush to amend the State's water quality standards, we should allow the administrative process to proceed. If it is not proceeding expeditiously enough, there are other methods to follow aside from putting our public health at risk.

Thank you for this opportunity to provide testimony.

Bill No. 834

Support Y  N

Date 2/9/09

Time 4:20P

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OFFICE OF HAWAIIAN AFFAIRS

Legislative Testimony

**HB 834, RELATING TO WATER QUALITY STANDARDS**

House Committees on Energy and Environmental Protection;  
and Water, Land, & Ocean Resources

February 10, 2009

9:30 a.m.

Room: 325

The Office of Hawaiian Affairs (OHA) **OPPOSES** SB1116, which seeks to amend state water quality standards for marine waters to make them conform to the less strict federal standards.

OHA understands that the state water quality standards for marine waters that are the subject of this bill are actually more stringent than the current U.S. Environmental Protection Agency (EPA) federal levels under the Clean Water Act. Our state marine waters are under threat from a variety of sources. Coral reefs around the state are disappearing. Many of our nearshore reef fish populations are severely depleted, and some species are so full of toxins that it is recommended to test them before we eat them. Therefore, OHA does not support a proposal to lower these water quality standards.

Furthermore, federal water quality standards may not be the best measure for Hawai'i's unique water quality. What works for the shoreline of the east coast of the mainland United States may not work or even be applicable here. For example, Hawai'i has tropical waters fed by our watershed system which affects the level of bacteria (enterococcus) found in our waters. In the continental U.S., the hydrology and biological inputs are very different.

OHA urges the Legislature not to support the lowering of our water quality standards by making them uniform to that of the federal EPA. The Clean Water Act allows states to make their own water quality standards, as long as they are at least as stringent as the federal requirements. Hawai'i has some of the strictest clean water standards in the nation, we have done so for good reason, and we should maintain them.

Therefore, OHA urges the Committees to HOLD HB 834. Thank you for the opportunity to testify.