

**CHAPTER 342D**  
**WATER POLLUTION**

Part I. Definitions and General Provisions

Section

- 342D-1 Definitions
- 342D-2 Administration
- 342D-3 Board membership
- 342D-4 Duties; rules
- 342D-5 Rules; specific
- 342D-6 Permits; procedures for
- 342D-6.5 Hawaiian loko i'a
- 342D-7 Variances
- 342D-8 Inspection of premises
- 342D-9 Enforcement
- 342D-10 Emergency powers; procedures
- 342D-11 Injunctive and other relief
- 342D-12 Appeal
- 342D-13 Fees
- 342D-14 Public records; confidential information; penalties
- 342D-15 Nonliability of department personnel
- 342D-16 Remedies preserved
- 342D-17 Enforcement by state and county authorities
- 342D-18 Other powers of department not affected
- 342D-19 Effect of laws, ordinances, and rules
- 342D-20 Priority in courts

Part II. Penalties

- 342D-30 Civil penalties
- 342D-31 Administrative penalties
- 342D-32 Negligent violations
- 342D-33 Knowing violations
- 342D-34 Knowing endangerment
- 342D-35 False statements
- 342D-36 Treatment of single operational upset
- 342D-37 Responsible corporate officer as "person"
- 342D-38 Hazardous substance defined
- 342D-39 Disposition of collected fines and penalties

Part III. Water Pollution Control

- 342D-50 Prohibition
- 342D-50.5 Treated or raw sewage; prohibition
- 342D-51 Affirmative duty to report discharges
- 342D-52 Testing of water and aquatic and other life
- 342D-53 Certifying agency
- 342D-54 Wastewater treatment works; financial assistance; grants

- 342D-55 Recordkeeping and monitoring requirements
- 342D-56 Complaints; hearings; appointment of masters
- 342D-57 Public participation activities; appointment of hearings officers
- 342D-58 Consultation and advice
- 342D-59 Research, educational, and training programs
- 342D-60 Annual reports

#### Part IV. Miscellaneous Provisions

- 342D-70 Use of gray water for irrigation purposes
- 342D-71 Recycled water use

#### Part V. Water Pollution Control Financing

- 342D-80 Definitions
- 342D-81 Declaration of policy
- 342D-82 Powers and duties
- 342D-82.5 Use of American Recovery and Reinvestment Act of 2009 and other federal moneys
- 342D-83 Revolving fund; establishment, purposes, coordination
- 342D-84 Revolving fund; uses
- 342D-85 Revolving fund; deposits
- 342D-86 Revolving fund; fees, interest, and investment on accounts
- 342D-87 Revolving fund; conditions
- 342D-88 Revenue bonds; authorization
- 342D-89 Revenue bonds; payment and security
- 342D-90 Revenue bonds; amount issued
- 342D-91 Revenue bonds; investment of proceeds, and redemption
- 342D-92 Trustee; designation; duties
- 342D-93 Trust indenture

#### Part VI. Discharges from Commercial Passenger Vessels

- 342D-101 Definitions
- 342D-102 Prohibited discharges; limitations on discharges
- 342D-103 Prohibited air emissions
- 342D-104 Information-gathering requirements
- 342D-105 Recordkeeping requirements
- 342D-106 Reporting requirements
- 342D-107 Memorandum of understanding; recognition program
- 342D-108 Exemption for vessels in innocent passage
- 342D-109 Activities of the department
- 342D-110 Fine schedules for illegal discharges
- 342D-111 Alternative terms and conditions of vessel discharges

### **Note**

Department of transportation's bridge rehabilitation and replacement program; temporary exemption from certain construction requirements of this chapter through June 30, 2017 or until completion. L 2012, c 218.

Total maximum daily load coordinator positions. L 2009, c 98, §6.

### **Cross References**

Environmental courts, jurisdiction over proceedings arising under this chapter, see §604A-2.

Nonpoint source pollution management and control, see chapter 342E.

### **Law Journals and Reviews**

Liability Insurance Coverage for Pollution Claims. 12 UH L. Rev. 83.

Enforcement of Environmental Laws in Hawai'i. 16 UH L. Rev. 85.

Ala Loop and the Private Right of Action Under Hawai'i Constitution Article XI, Section 9: Charting a Path Toward a Cohesive Enforcement Scheme. 33 UH L. Rev. 367 (2010).

### **Case Notes**

Department of health's (DOH) duties under the public trust doctrine requires the DOH to not only issue permits after prescribed measures appear to be in compliance with state regulation, but also to ensure that the prescribed measures are actually being implemented after a thorough assessment of the possible adverse impacts the development would have on the State's natural resources; this duty is consistent with the constitutional mandate under article XI, §1 of the Hawaii constitution and the duties imposed upon the DOH by this chapter and chapter 342E. 111 H. 205, 140 P.3d 985.

## **"PART I. DEFINITIONS AND GENERAL PROVISIONS**

**§342D-1 Definitions.** As used in this chapter, unless the context otherwise requires:

"Available recycled water service" means the existence of an operable recycled water distribution main within one hundred feet of the property line.

"Coastal waters" means all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters, and salt waters that are subject to the ebb and flow of the tide.

"Complaint" means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

"Department" means the department of health.

"Director" means the director of health.

"Domestic sewage" is waste and wastewater from humans or household operations that:

- (1) Is discharged to or otherwise enters a treatment works; or
- (2) Is of a type that is usually discharged to or otherwise enters a treatment works or an individual wastewater system.

Individual wastewater systems include cesspools, septic tanks, and household aerobic units. As used here "waste" means any liquid, gaseous, and solid substance, whether treated or not, and whether or not it pollutes or tends to pollute state waters, and "waste" excludes industrial and agricultural substances that are not combined with substances from humans or household operations. As used here "wastewater" means any liquid "waste", as used above, whether treated or not.

"Drainage ditch" means that facility used to carry storm runoff only.

"Effluent" means any substance discharged into state waters, publicly owned treatment works, or sewerage systems, including, but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

"Effluent sources" include, but are not limited to, sewage outfalls, refuse systems and plants, water systems and plants, industrial plants, and contributors to publicly owned treatment works or sewerage systems.

"Gray water" means any untreated wastewater that has not come into contact with toilet waste. Gray water includes used water from bathtubs, showers, and bathroom wash basins and water from clothes washers and laundry tubs; provided that the water is not contaminated with any household hazardous waste as defined in section 342G-1, hazardous waste as defined in section 342J-2, or any contaminant the department deems inappropriate.

Gray water excludes wastewater from food preparation sinks or dishwashers.

"Industrial user" means a source of water pollutants into a publicly owned treatment works from any nondomestic source regulated under section 307(b), (c), or (d) of the Federal Water Pollution Control Act.

"Management practices" include treatment, processing, storage, transport, use, and disposal.

"New source" means any source of water pollution the construction of which is commenced after the adoption of rules prescribing a standard of performance which will be applicable to such source.

"Party" means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

"Permit" means written authorization from the director to discharge waste or to construct, modify, or operate any water pollution source. A permit authorizes the grantee to cause or discharge waste or water pollution in a manner or amount, or to do an act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

"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.

"Pollution" means water pollution.

"Recycled water" and "reclaimed water" mean treated wastewater that by design is intended or used for a beneficial purpose.

"Sewage sludge" means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumping, Type III Marine Sanitation device pumpings (33 Code of Federal Regulations Part 159), and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

"Sewerage system" means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

"Standard of performance" means a standard for the control of the discharge of water pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best demonstrated control technology, processes, operating methods, or other alternatives,

including, where practicable, a standard permitting no discharge of water pollutants.

"State waters" means all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a water pollution control system are excluded.

"Treatment works" means any plant or other facility used for the purpose of controlling water pollution.

"Variance" means special written authorization from the director to cause or discharge waste or water pollution in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules adopted under this chapter.

"Waste" means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the waters of this State.

"Wastewater" means any liquid waste, whether treated or not, and whether animal, mineral, or vegetable including agricultural, industrial, and thermal wastes.

"Water pollutant" means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste.

"Water pollution" means:

- (1) Such contamination or other alteration of the physical, chemical, or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department. [L 1989, c 212, pt of §2; am L 1990, c 298, §2; am L 1995, c 180, §5; am

L 1999, c 193, §2 and c 288, §2; am L 2001, c 269, §2; am L 2013, c 233, §2]

#### **Note**

The amendment made by L 2014, c 218, §8 is not included in this section.

#### **Revision Note**

Subparagraphs (1) and (2) in definition of domestic sewage redesignated pursuant to §23G-15(1).

" **[§342D-2] Administration.** The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules. [L 1989, c 212, pt of §2]

" **[§342D-3] Board membership.** Notwithstanding any law to the contrary, no individual, board, or body of this State which grants permits required under this chapter shall be or include, as a member, any person who receives or has during the previous two years received, a significant portion of the person's income directly or indirectly from permit holders or applicants for a permit; provided that for the purposes of this section, no agency, board, or body of the State shall be considered a permit holder or applicant for a permit. [L 1989, c 212, pt of §2]

" **§342D-4 Duties; rules.** In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate water pollution in the State and may control all management practices for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution. In the discharge of this duty, the director may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules. [L 1989, c 212, pt of §2; am L 1995, c 180, §6; am L 1999, c 193, §3]

" **[§342D-5] Rules; specific.** The director may establish by rule, water quality standards, effluent standards, treatment and pretreatment standards, and standards of performance for specific areas and types of discharges in the control of water

pollution, thereby allowing for varying local conditions. [L 1989, c 212, pt of §2]

" **§342D-6 Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

(b) The department may require that applications for permits shall be accompanied by plans, specifications, and any other information that it deems necessary in order to determine whether the proposed installation, alteration, or use will be in accord with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that it will be in the public interest; provided that the permit may be subject to any reasonable conditions that the director may prescribe. The director may include conditions in permits or may issue separate permits for management practices for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that it will be in the public interest. The director shall not grant or deny an application for the issuance or renewal of a permit without affording the applicant and any person who commented on the proposed permit during the public comment period an opportunity for a hearing in accordance with chapter 91. A request for a hearing and any judicial review of the hearing shall not stay the effect of the issuance or renewal of a permit unless specifically ordered by the director or [an] environmental court.

(d) The director, on the director's own motion or the application of any person, may modify, suspend, revoke, or revoke and reissue any water pollution permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

- (1) There is a violation of any condition of the permit;
- (2) The permit was obtained by misrepresentation, or there was failure to disclose fully all relevant facts;
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (4) It is in the public interest.

The public interest excludes any reason less stringent than the causes for permit modification, revocation, and termination, or revocation and reissuance identified in 40 Code of Federal Regulations section 122.62 or 122.64.

(e) The director, on the director's own motion or the application of any person, may modify, suspend, revoke, or



revoke and reissue any sludge permit after affording the permittee an opportunity for a hearing in accordance with chapter 91, and consistent with 40 Code of Federal Regulations section 501.15(c)(2) and (3) and (d)(2).

(f) The director shall ensure that the public receives notice of each application for a permit to control water pollution. The director may hold a public hearing before ruling on an application for a permit to control water pollution if the director determines the public hearing to be in the public interest. In determining whether a public hearing would be in the public interest, the director shall be guided by 40 Code of Federal Regulations section 124.12(a).

(g) In determining the public interest regarding permit issuance or renewal, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director, by rule, may prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

(h) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application so long as the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as part thereof. [L 1989, c 212, pt of §2; am L 1995, c 180, §7; am L 1997, c 267, §1; am L 1999, c 193, §4; am L 2014, c 218, §8]

" **§342D-6.5 Hawaiian loko i'a.** (a) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any loko i'a, or Hawaiian fishpond as defined in section 183B-1, before all other permits and certifications. The director shall render a decision on the completeness of any application for that permit or water quality certification within thirty days of receipt. Applications for loko i'a reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any loko i'a within one hundred fifty days.

(b) The department shall waive the requirement to obtain water quality certification under this chapter for any person that has received notice of authorization to proceed from the department of land and natural resources office of conservation and coastal lands under the statewide programmatic general permit for the restoration, repair, maintenance, and operation of loko i'a.

(c) For purposes of this section:

"Water quality certification" means state certification pursuant to section 401 of the federal Clean Water Act. [L 1995, c 177, §3; am L 2015, c 230, §2]

" **§342D-7 Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the water quality standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the discharge of water pollutant in excess of applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

(1) The continuation of the function or operation involved in the discharge of waste occurring or proposed to occur by the granting of the variance is in the public interest as defined in section 342D-6;

(2) The discharge occurring or proposed to occur does not substantially endanger human health or safety; and

(3) Compliance with the rules or standards from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the water pollution involved, it shall be only until the necessary means for prevention, control, or abatement

become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the water pollution involved.

- (2) The director may issue a variance for a period not exceeding five years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform discharge or effluent sampling and report the results of such sampling to the department.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for discharge not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Notwithstanding any provision in this section, no variance shall be granted or renewed pursuant to this chapter with respect to any discharge of water pollutants or wastes that is in violation of the requirements of the Federal Water Pollution Control Act and the amendments thereto.

(i) Any application for a variance, submitted pursuant to this chapter, shall be subject to the public participation requirements listed below:

- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge or other proposed activity. Procedures for the circulation of public notices shall include at least the following:

- (A) Notice shall be given within the geographical areas of the proposed discharge or other proposed activity;
  - (B) Notice shall be mailed to any person or group upon request; and
  - (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area;
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director;
- (3) The contents of public notice of applications for variances shall include at least the following:
- (A) Name, address, and phone number of agency issuing the public notice;
  - (B) Name and address of each applicant;
  - (C) Brief description of each applicant's activities or operations which result in the discharge or other activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, or pineapple cannery);
  - (D) A short description of the location of each discharge indicating whether the discharge is new or existing;
  - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) and any other means by which interested persons may influence or comment upon those determinations; and
  - (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents; and
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of

the proposed discharge or other proposed activity, or other appropriate area, at the discretion of the director. [L 1989, c 212, pt of §2; am L 1998, c 2, §88]

" **§342D-8 Inspection of premises.** (a) The director, in accordance with law, may enter and inspect any building or place to:

- (1) Investigate an actual or suspected source of water pollution;
- (2) Investigate actual or suspected management practices for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution;
- (3) Ascertain compliance or noncompliance with this chapter, any rule or standard adopted by the department pursuant to this chapter, or any permit or other approval granted by the department pursuant to this chapter; and
- (4) Make reasonable tests in connection therewith.

(b) The director may require any permittee or holder of a variance or person subject to pretreatment requirements to permit the director or the director's authorized representative upon the presentation of the director's or representative's credentials:

- (1) To enter upon permittee's or variance holder's premises or premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are required to be kept under the terms and conditions of the permit or variance or pretreatment requirements;
- (2) To inspect any monitoring equipment or method required in the permit or variance or by pretreatment requirements; and
- (3) To sample any discharge of water pollutants or effluent.

(c) No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of water pollution shall be disclosed by the official or employee except as it relates directly to water pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment. [L 1989, c 212, pt of §2; am L 1995, c 180, §8; am L 1999, c 193, §5]

" **§342D-9 Enforcement.** (a) [*Subsection effective until December 31, 2016. For subsection effective January 1, 2017, see below.*] If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take any measures that may be necessary to correct the violation and to give periodic progress reports;
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of; and
- (3) May impose penalties as provided in section 342D-31 by sending written notice, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(a) [*Subsection effective January 1, 2017. For subsection effective until December 31, 2016, see above.*] If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take any measures that may be necessary to correct the violation and to give periodic progress reports; provided that if all attempts of service of process upon the alleged violator or violators are unsuccessful by personal delivery and by certified, registered, or express mail, notice may be given via a posting on a searchable government website and a sign conspicuously posted on the property, if appropriate;
- (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of; and
- (3) May impose penalties as provided in section 342D-31 by sending written notice, either by certified mail or by

personal service, to the alleged violator or violators describing the violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter after having been served notice of violation, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter;
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of the schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director;
- (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until the director accepts the written schedule; and
- (4) May impose penalties as provided in section 342D-31 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(c) If the director determines that any person has violated an accepted schedule or an order issued under this section, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty

imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

(e) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to collect the administrative penalty which shall be a government realization.

In any proceeding to collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing expired without a request for a hearing;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties. [L 1989, c 212, pt of §2; am L 1990, c 298, §3; am L 1995, c 180, §9; am L 2016, c 45, §1]

### **Law Journals and Reviews**

Ala Loop and the Private Right of Action Under Hawai'i Constitution Article XI, Section 9: Charting a Path Toward a Cohesive Enforcement Scheme. 33 UH L. Rev. 367 (2010).



## Case Notes

Department notice sent under subsection (a)(1) by regular mail was not considered commencement of an action for penalties. 891 F. Supp. 1389.

Hawaii laws relevant to citizens' enforcement action (brought under section of Clean Water Act), which required it to provide only violators with notice and an opportunity to be heard on pre-final decisions, failed to establish public's right to early information and intervention; Hawaii law was not sufficiently "comparable" to Clean Water Act to allow preemption of plaintiff's lawsuit. 904 F. Supp. 1098.

" **§342D-10 Emergency powers; procedures.** (a) Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to the public health and safety is or will be caused by the discharge of waste, any combination of discharges of waste, or any management practice that requires immediate action, the governor or the director, without a public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop the discharge, or to reduce, stop, or change the management practice, and may take any and all other actions as may be necessary. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director. Management practices covered in this subsection are those for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office. [L 1989, c 212, pt of §2; am L 1995, c 180, §10 and c 201, §2; am L 1999, c 193, §6]

## Cross References

Environmental response law, see chapter 128D.

" **§342D-11 Injunctive and other relief.** The director may institute a civil action in any environmental court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance, to impose and collect

civil penalties, to collect administrative penalties, or to obtain other relief. The environmental court shall have power to grant relief in accordance with the Hawaii rules of civil procedure. [L 1989, c 212, pt of §2; am L 1995, c 180, §11; am L 2014, c 218, §8]

### **Rules of Court**

Injunctions, see HRCF rule 65.

" **[\$342D-12] Appeal.** If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit environmental court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by [an] environmental court of competent jurisdiction. [L 1989, c 212, pt of §2; am L 2014, c 218, §8]

" **[\$342D-13] Fees.** The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund. [L 1989, c 212, pt of §2]

### **Note**

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[\$342D-14] Public records; confidential information; penalties.** Reports submitted to the department on discharges of waste shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section 342D-8 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000. [L 1989, c 212, pt of §2]

## Note

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[\$342D-15] Nonliability of department personnel.** Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section 342D-14. [L 1989, c 212, pt of §2]

" **§342D-16 Remedies preserved.** No existing civil or criminal remedy for any wrongful action that is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter. No existing civil or criminal remedy shall exclude or impair the remedies provided in this chapter. [L 1989, c 212, pt of §2; am L 1999, c 193, §7]

" **[\$342D-17] Enforcement by state and county authorities.** All state and county health authorities and police officers shall enforce this chapter and the rules and orders of the department. [L 1989, c 212, pt of §2]

## Law Journals and Reviews

Ala Loop and the Private Right of Action Under Hawai'i Constitution Article XI, Section 9: Charting a Path Toward a Cohesive Enforcement Scheme. 33 UH L. Rev. 367 (2010).

" **[\$342D-18] Other powers of department not affected.** The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law. [L 1989, c 212, pt of §2]

" **[\$342D-19] Effect of laws, ordinances, and rules.** (a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

(b) Any county may adopt ordinances and rules governing any matter relating to water pollution control which is not governed by a rule of the department adopted pursuant to this chapter; provided that any county ordinance or rule relating to water pollution control shall be void and of no effect as to any

matter regulated by a rule of the department upon the adoption thereof except as provided in subsection (c).

(c) Any county desiring to administer its own laws, ordinances, and rules on the design, construction, and operation of sewerage and treatment facilities may submit to the director a full and complete description of the program it proposes to establish and administer under county law. In addition, the county shall submit a statement from its corporation counsel or county attorney that the laws of the county provide adequate authority and the standards are equal to or more stringent than the standards of the department to carry out the described program. The director shall approve each such submitted program unless the director determines that either adequate authority does not exist or the proposed standards are less stringent than those of the department. [L 1989, c 212, pt of §2]

" **[§342D-20] Priority in courts.** All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter shall in the discretion of the court receive priority in the courts of the State. [L 1989, c 212, pt of §2]

#### **Note**

The amendment made by L 2014, c 218, §8 is not included in this section.

### **"PART II. PENALTIES**

**§342D-30 Civil penalties.** (a) Any person who violates this chapter, any rule, or any term or condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$25,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in environmental court to impose or collect the penalty provided for in this section shall be considered a civil action. In determining the amount of a civil penalty the environmental court shall consider the seriousness of the violation or violations, the economic benefit, if any, resulting from the violation, any history of these violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and any other matters that justice may require. It shall be presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof of the contrary is on the violator.

(b) Any person who denies, obstructs, or hampers the entrance or inspection by any duly authorized officer or

employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$10,000 for each day of denial, obstruction, or hampering. Any action taken in environmental court to impose or collect the penalty provided for in this subsection shall be considered a civil action. [L 1989, c 212, pt of §2; am L 1991, c 157, §12; am L 1995, c 180, §12; am L 1997, c 147, §2; am L 1999, c 193, §8; am L 2014, c 218, §8]

" **§342D-31 Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section 342D-30.

(b) Factors to be considered in imposing an administrative penalty include:

- (1) The nature, circumstances, extent, gravity, and history of the violation and of any prior violations;
- (2) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action;
- (4) Good faith efforts to comply;
- (5) Degree of culpability; and
- (6) Such other matters as justice may require.

(c) It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator. [L 1989, c 212, pt of §2; am L 1994, c 269, §2; am L 1995, c 180, §13; am L 1999, c 193, §9]

" **§342D-32 Negligent violations.** Any person who:

- (1) Negligently violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter or any requirement imposed in a pretreatment program under this chapter; or
- (2) Negligently introduces into a sewerage system or into a publicly owned treatment works any water pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than two years, or by both. [L 1989, c 212, pt of §2; am L 1994, c 5, §2]

" **[\$342D-33] Knowing violations.** Any person who:

- (1) Knowingly violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter or any requirement imposed in a pretreatment program; or
- (2) Knowingly introduces into a sewerage system or into a publicly owned treatment works any water pollutant or hazardous substance which such person knew or reasonably should have known could cause personal injury or property damage or, other than in compliance with all applicable federal, state, or local requirements or permits, which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under this chapter;

shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than three years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than six years, or by both. [L 1989, c 212, pt of §2]

" **[\$342D-34] Knowing endangerment.** (a) Any person who knowingly violates this chapter or any rule adopted by the department pursuant to this chapter, or any condition in a permit issued under this chapter, and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than fifteen years, or both.

(b) A person which is an organization, upon conviction of violating this section, shall be subject to a fine of not more than \$1,000,000. If a conviction of a person is for a violation committed after a first conviction of such person under this section, the maximum punishment shall be doubled with respect to both fine and imprisonment.

(c) For the purpose of this section, in determining whether a defendant who is an individual knew that the individual's conduct placed another person in imminent danger of death or serious bodily injury:

- (1) The person is responsible only for actual awareness or actual belief that the person possessed; and
- (2) Knowledge possessed by a person other than the defendant but not by the defendant may not be attributed to the defendant; except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself or herself from relevant information.

(d) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

- (1) An occupation, a business, or a profession; or
- (2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent; and such defense may be established under this section by a preponderance of the evidence.

(e) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(f) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. [L 1989, c 212, pt of §2]

" **[§342D-35] False statements.** Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this section, punishment shall be by a fine of not more

than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both. [L 1989, c 212, pt of §2]

" **[\$342D-36] Treatment of single operational upset.** For the purpose of this part, a single operational upset which leads to simultaneous violations of more than one water pollutant parameter shall be treated as a single violation. [L 1989, c 212, pt of §2]

" **[\$342D-37] Responsible corporate officer as "person".** For the purpose of this chapter, the term "person" means, in addition to the definition contained in section 342D-1, any responsible corporate officer. [L 1989, c 212, pt of §2]

" **[\$342D-38] Hazardous substance defined.** For the purpose of this part, the term "hazardous substance" means:

- (1) Any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (FWPCA);
- (2) Any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980;
- (3) Any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress);
- (4) Any toxic pollutant listed under section 307(a) of the FWPCA; and
- (5) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. [L 1989, c 212, pt of §2]

#### **Cross References**

Environmental response law, see chapter 128D.

Hawaii emergency planning and community right-to-know act, see chapter 128E.

" **[\$342D-39] Disposition of collected fines and penalties.** Fines and penalties collected under this part shall be deposited into the environmental response revolving fund established by section 128D-2. [L 1991, c 157, §2]

#### **"PART III. WATER POLLUTION CONTROL**



**§342D-50 Prohibition.** (a) No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.

(b) No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, sewage, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the director.

(c) No person, including any industrial user, shall discharge any water pollutant or effluent into a publicly owned treatment works or sewerage system in violation of:

- (1) A pretreatment standard established by the department or the publicly owned treatment works; or
- (2) A pretreatment condition in a permit issued by the department or a publicly owned treatment works.

(d) No person, including any public body, shall violate any rule adopted pursuant to this chapter or any permit or variance issued or modified pursuant to this chapter. [L 1989, c 212, pt of §2; am L 1995, c 180, §14]

" **[§342D-50.5] Treated or raw sewage; prohibition.** (a) Notwithstanding any other law to the contrary, no person, including any public body, shall discharge any treated or raw sewage into state waters after December 31, 2026; provided that this section shall not apply to a sewage treatment plant that:

- (1) Utilizes sewage to produce clean energy pursuant to section 196-10.5; and
- (2) Is in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.

(b) Nothing in this section shall be construed to:

- (1) Prohibit the use of reclaimed or recycled water for a beneficial purpose as provided by law; or
- (2) Allow the discharge of treated or raw sewage into state waters in violation of any federal statute, rule, or regulation. [L 2016, c 248, §1]

" **§342D-51 Affirmative duty to report discharges.** Any person who has caused an unlawful discharge under section 342D-50(a) has an affirmative duty to report the incident to the director within twenty-four hours of the discharge, unless a valid permit issued under section 342D-6 specifies another

reporting period for the specific discharge. [L 1989, c 212, pt of §2; am L 1991, c 157, §13]

" **[§342D-52] Testing of water and aquatic and other life.**

The director may test any water and aquatic and other life that has been subjected to an oil spill or any other form of water pollution and assess the environmental effects of the pollution, including its effects on:

- (1) The quality of the receiving water; and
- (2) Aquatic and other life.

If the department determines that the effects are such that it would be hazardous to consume the aquatic or other life, the department shall immediately notify the public of that hazard through the news media and by posting warning signs in the areas where the water and shoreline contain aquatic or other life that would be hazardous to consume. [L 1989, c 212, pt of §2]

" **[§342D-53] Certifying agency.** The director may act as a certifying agency, as defined in 40 Code of Federal Regulations 121.1(e) (1985). [L 1989, c 212, pt of §2]

" **§342D-54 Wastewater treatment works; financial assistance; grants.**

(a) The director may make grants to any county or state agency for the construction of necessary wastewater treatment works and for other projects intended for recycled water or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters.

- (b) No grant shall be made for any project unless:
  - (1) The project conforms with the state water pollution control plan;
  - (2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs;
  - (3) In the case of wastewater treatment works, the application for the grant contains the following:
    - (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the wastewater treatment works after its construction; and
    - (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to ensure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties;

- (4) The county or state agency receiving these state funds requires the installation of the low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects, and the fixtures and devices shall be approved by the International Association of Plumbing and Mechanical Officials and shall comply with applicable American National Standards Institute standards and other standards as may be required by the respective county for all new residential and public buildings; and
- (5) The department, where appropriate, determines that the county receiving these funds has taken specific steps to reduce polluted runoff into state waters through educational and regulatory programs.

(c) If federal grant funds are available, the applicant shall be required to pay sixty per cent of the nonfederal share of the estimated reasonable cost of the approved wastewater treatment works as defined by Title 33 United States Code section 1251 et seq. If federal grant funds are not available, the director may make grants up to one hundred per cent of the estimated cost of the project.

(d) Nothing in this section shall restrict the director's authority to make grants to wastewater treatment works or projects granted waivers under Title 33 United States Code section 1311(h).

(e) No moneys used or available for financing under part V shall be used for grants under this section.

(f) No later than twenty days prior to the convening of each regular session of the legislature, the director shall submit to the legislature a financial report addressing the status of each grant made during the last completed fiscal year. [L 1989, c 212, pt of §2; am L 1991, c 262, §1; am L 1996, c 81, §1; am L 1997, c 221, §2; am L 2001, c 269, §3]

" **§342D-55 Recordkeeping and monitoring requirements.** (a) The director may require the owner or operator of any effluent source, works, system, or plant; any discharger of effluent; the applicant for written authorization under this chapter for such sources or facilities; or any person engaged in management practices to:

- (1) Establish and maintain records;
- (2) Make reports and plans that shall cover existing situations and proposed additions, modifications, and alterations;
- (3) Install, use, and maintain monitoring equipment or methods;

- (4) Sample effluent, state waters, sewage sludge, and recycled water; and
- (5) Provide such other information as the department may require.

(b) The director may require that information and items required under subsection (a) be complete and detailed, in a prescribed form, made or prepared by a competent person acceptable to the director, and at the expense of the owner, operator, or applicant.

(c) Management practices covered in this section are those for domestic sewage, sewage sludge, and recycled water, whether or not such practices cause water pollution. [L 1989, c 212, pt of §2; am L 1995, c 180, §15; am L 1999, c 193, §10; am L 2001, c 269, §4]

" **[\$342D-56] Complaints; hearings; appointment of masters.**

The director may:

- (1) Receive or initiate complaints of water pollution, hold hearings in connection with water pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of water pollution; and
- (2) Appoint a master or masters to conduct investigations and hearings. [L 1989, c 212, pt of §2]

" **[\$342D-57] Public participation activities; appointment of hearings officers.** The director may appoint, without regard to chapter 76, hearings officers to conduct public participation activities, including public hearings and public informational meetings. [L 1989, c 212, pt of §2; am L 2000, c 253, §150]

" **[\$342D-58] Consultation and advice.** The director may consult with and advise:

- (1) Any person engaged or intending to be engaged in any business or undertaking whose waste, sewage, or drainage is polluting or may tend to pollute state waters; and
- (2) Persons intending to alter or to extend any system of drainage, sewage, or water supply. [L 1989, c 212, pt of §2]

" **[\$342D-59] Research, educational, and training programs.**

The director may:

- (1) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of water pollution, the quality of the receiving water and the means to monitor the quality

- of water, or to effect the proper disposal of sewage, drainage, and waste;
- (2) With the approval of the governor, cooperate with, and receive money from the federal government, or any political subdivision of the State or from private sources for the study and control of water pollution; and
  - (3) Conduct and supervise state educational and training programs on water pollution prevention, control, and abatement, including the preparation and distribution of information relating to water pollution. [L 1989, c 212, pt of §2]

" **§342D-60 Annual reports.** The director may publish annual reports on the quality of the state waters, which annual report shall include, but not be limited to:

- (1) A description of sampling programs and quality control methods procedures;
- (2) Statistical analysis and interpretation of the data on an annual basis by specific points (monitoring stations);
- (3) Discussion of the results of these analyses to the extent that the implications can be understood by the general public;
- (4) Recommendations for the modification of the water quality monitoring program to enhance its effectiveness for maintaining high standards of water quality in the State; and
- (5) A note of any significant changes in the quality of state waters. [L 1989, c 212, pt of §2]

**"[PART IV. MISCELLANEOUS PROVISIONS]**

**§342D-70 Use of gray water for irrigation purposes.** (a) The department may authorize any county to implement a gray water recycling program within its jurisdiction. The gray water recycling program shall be limited to the use of gray water for the purpose of irrigating lawns and gardens. All use of gray water shall conform to the state plumbing code, chapter 3-183, Hawaii administrative rules.

(b) The county seeking authorization shall submit to the department for its approval prior to implementation a detailed gray water recycling plan, including rules and procedures for the proposed program. The plan shall address the appropriateness of the program for the geographic area, the environmental impact of the program on the geographic area, the cost of the program, and any other factors deemed relevant by

the department. The department may revoke the authorization at any time.

The department and the counties are encouraged to promote widespread use of gray water consistent with subsection (a) in the interests of water conservation. Any guidelines for the use of gray water for irrigation purposes shall be liberally construed so as to allow widespread use of gray water.

(c) For the purposes of this section, "gray water" shall have the same meaning as in section 342D-1. [L 1993, c 66, §2; am L 2013, c 233, §3]

" **[§342D-71] Recycled water use.** All state and county facilities using potable water irrigation systems may connect to available recycled water service. [L 2001, c 269, §1]

## "[PART V.] WATER POLLUTION CONTROL FINANCING

### Cross References

Drinking water financing, see §§340E-31 to 41.

**§342D-80 Definitions.** As used in this part, unless the context otherwise requires:

"American Recovery and Reinvestment Act of 2009" means the federal law, Public Law 111-5, making appropriations for various purposes, including job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization purposes.

"Corpus allocation" means the amount of moneys in the revolving fund that is allocated by the director to provide earnings to reduce an eligible party's total financing costs for one or more eligible projects.

"Eligible party" means a county, state agency, or private person.

"Revolving fund" means the water pollution control revolving fund established by section 342D-83. [L 1997, c 221, pt of §1; am L 2002, c 132, §3; am L 2009, c 98, §5]

" **§342D-81 Declaration of policy.** The State's policy is to promote water pollution prevention and control, including the use of recycled water, by financing eligible projects of eligible parties consistent with applicable federal and state laws. The State intends the financing to occur through a revolving fund loan program that makes loans to eligible parties at or below market rates and a leveraging program that uses revenue bonds and revolving fund loan programs together in a

coordinated manner that does not cause the state debt ceiling to be exceeded. [L 1997, c 221, pt of §1; am L 2001, c 269, §5; am L 2002, c 132, §4]

" **§342D-82 Powers and duties.** (a) In addition to any other power or duty prescribed by law, the director shall:

- (1) Establish fiscal controls and accounting procedures at least sufficient to assure proper accounting for appropriate accounting periods of payments, disbursements, revenues, and fees received and made for fund balances at the beginning and end of the accounting period;
  - (2) Comply with sections 39-61 and 39-62 and ensure that any revenue bonds issued are excluded from the state constitutional debt ceiling. The revolving fund is a "special fund" within the meaning of article VII, section 13, of the state constitution and part III of chapter 39. The revolving fund is not a "special fund" within the meaning of sections 36-27 and 36-30; and
  - (3) No later than twenty days prior to the convening of each regular session of the legislature, submit to the legislature a financial report addressing the operations of the revolving fund during the last completed fiscal year.
- (b) The director may:
- (1) Provide financial assistance consistent with this part to any eligible party for the prevention, control, and abatement of water pollution in the State;
  - (2) Enter into any necessary or required agreement and give or make any necessary or required assurance, designation, or certification with or to any person in order to receive payments or to make or provide any financial assistance in conformance with Title 33 United States Code sections 1329, 1330, and 1383 to 1387;
  - (3) Enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants;
  - (4) Adopt rules pursuant to chapter 91 for the purposes of this part, including rules setting fees for loans issued through the revolving fund and penalties for default of loan repayments;
  - (5) Pledge funds, loans, and accounts or subaccounts in the revolving fund to the payment or security of revenue bonds or loans issued under this part and make such corpus allocations as the director deems

appropriate. The pledge shall constitute a lien and security interest on such funds and loans to the extent and with the priority as set forth in the document establishing the pledge, without physical delivery, recording, or other further act;

- (6) Perform any act considered reasonably necessary, advisable, or expedient for the administration of this part or the advancement of the purposes of this part; and
- (7) Direct the creation of one or more separate accounts or subaccounts within the revolving fund and specify any conditions applicable to the transfer of moneys and securities among the accounts and subaccounts. [L 1997, c 221, pt of §1; am L 2002, c 132, §5]

" **[§342D-82.5] Use of American Recovery and Reinvestment Act of 2009 and other federal moneys.** (a) The director may provide financial assistance for publicly owned wastewater treatment works for the construction of necessary wastewater infrastructure projects, through the revolving fund, using moneys from the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(b) The director may establish a separate account within the revolving fund and assign to that account federal moneys appropriated under federal laws that authorize principal forgiveness, zero and negative interest loans, and grants, including the American Recovery and Reinvestment Act of 2009 and other applicable federal acts. The director may use those moneys and in so doing may include additional requirements and subsidization not applicable to the remainder of the revolving fund, including forgiveness of principal, zero and negative interest loans, and grants to publicly-owned wastewater treatment works that meet eligibility requirements for the revolving fund.

(c) The director shall certify that a project receiving financial assistance is entitled to priority over other eligible projects on the basis of water pollution and financial needs, as well as a preference to those projects that can be started and completed expeditiously as stipulated under the American Recovery and Reinvestment Act of 2009 and other applicable federal acts.

(d) Among eligible projects, the director may also give priority to projects that incorporate renewable energy, energy efficiency, and conservation measures in wastewater infrastructure, to the extent allowed by federal law.

(e) Each project receiving financial assistance shall be in conformance with the conditions for water pollution control



financing under section 342D-87(a)(1), (2), (4), and (5), and (b). [L 2009, c 98, §3]

" **§342D-83 Revolving fund; establishment, purposes, coordination.** (a) There is established in the state treasury a fund to be known as the water pollution control revolving fund to be administered by the director. The revolving fund shall be administered, operated, and maintained to remain available in perpetuity for its stated purpose.

(b) The purpose of the revolving fund is to provide financial assistance to eligible parties for projects or activities to:

- (1) Enable counties and state agencies to plan, design, and construct publicly owned wastewater treatment works in accordance with title 33 United States Code sections 1381 to 1387;
- (2) Enable eligible parties to implement management programs established under title 33 United States Code section 1329;
- (3) Enable eligible parties to implement conservation and management plans established under title 33 United States Code section 1330;
- (4) 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 title 33 United States Code section 1383;
- (5) Enable eligible nonprofit entities to provide assistance to small and medium sized publicly owned treatment works for training activities, planning, design, and associated preconstruction activities under title 33 United States Code section 1383;
- (6) Enable eligible parties to manage, reduce, treat, or recapture stormwater or subsurface drainage water under title 33 United States Code section 1383;
- (7) Enable eligible parties to develop and implement watershed projects meeting the criteria under title 33 United States Code section 1274;
- (8) Enable counties and state agencies to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse under title 33 United States Code section 1383;
- (9) Enable counties and state agencies to reduce the energy consumption needs for publicly owned treatment works under title 33 United States Code section 1383;

- (10) Enable eligible parties to reuse or recycle wastewater, stormwater, or subsurface drainage water under title 33 United States Code section 1383; and
- (11) Enable eligible parties to increase the security of publicly owned treatment works under title 33 United States Code section 1383. [L 1997, c 221, pt of §1; am L 2002, c 132, §6; am L 2016, c 240, §2]

" **§342D-84 Revolving fund; uses.** (a) Moneys in the revolving fund, if consistent with the purpose of the revolving fund stated in section 342D-83(b), may be used to:

- (1) Provide, make, and condition loans;
- (2) Guarantee eligible party loans and bonds and to purchase or provide bond insurance or other credit enhancement or liquidity support for eligible party debt service payments when such action would improve credit market access or reduce interest rates;
- (3) Buy or refinance debt obligations of eligible parties at or below market rates, when the debt obligations were incurred after March 7, 1985;
- (4) Support and pay the reasonable costs of administering the revolving fund, including operation and maintenance of the revolving fund, subject to the limits in Title 33 United States Code section 1383(d)(7) and Title 40 Code of Federal Regulations section 35.3120(g), and to provide a source of revenue or security for such support and payment;
- (5) Pay the principal, interest, and redemption premium, if any, on revenue bonds issued by the director, if the proceeds of revenue bonds will be deposited in the revolving fund;
- (6) Provide interest rate subsidies from earnings on corpus allocation to subsidize loans to eligible parties made from the proceeds of the revenue bonds of the department; and
- (7) Provide interest rate subsidies to eligible parties by depositing revolving fund moneys into interest bearing accounts in participating financial institutions that issue loans for the implementation of eligible projects under section 342D-83(b).

(b) The entire water pollution control loan program, and not only those accounts or subaccounts funded by revenue bond proceeds, shall be subject to section 39-61 for the purposes of accomplishing leveraging and exclusion of the revenue bonds from the state constitutional debt ceiling. [L 1997, c 221, pt of §1; am L 2002, c 132, §7]

" **§342D-85 Revolving fund; deposits.** The following may be deposited into the revolving fund:

- (1) Federal capitalization grant funds and other federal grants, loans, or appropriations;
- (2) Appropriations by the legislature to the revolving fund;
- (3) Payments of principal and interest and other amounts made by eligible parties pursuant to loans or other agreements entered into with the director pursuant to this part; provided that if the loans were financed by proceeds of revenue bonds of the director, the deposit of the payments into the revolving fund shall be subject to the rights of the holders of the bonds to receive the moneys;
- (4) Fees for loans and other items under section 342D-86;
- (5) Proceeds of revenue bonds issued by the director for the purpose of providing financial assistance to eligible parties;
- (6) Moneys paid to the revolving fund as a result of court ordered awards of judgments;
- (7) Moneys paid to the revolving fund in court-approved or out-of-court settlements;
- (8) All interest attributable to investment of moneys deposited in the revolving fund; and
- (9) All moneys allotted or directed to the revolving fund from other sources. [L 1997, c 221, pt of §1; am L 2002, c 132, §8]

#### **Note**

The amendment made by L 2014, c 218, §8 is not included in this section.

" **[[§342D-86] Revolving fund; fees, interest, and investment on accounts.** (a) The director may establish fees for loans, loan and bond guarantees, debt purchase and refinancing, interest rate subsidies, and other credit enhancement or liquidity support issued or provided through the revolving fund.

(b) The director shall adopt rules pursuant to chapter 91 for the purposes of this part, including fees for loans and other financial assistance, and penalties for default of loan and other financial assistance repayments.

(c) If established, fees shall cover the costs of current activities, including the issuance of loans and other financial assistance, monitoring of loans and other financial assistance repayments and conditions, technical review of the planning and design documents, monitoring of construction activities,

conducting operation and maintenance inspections of wastewater facilities, and other activities of the revolving fund pursuant to Title 33 United States Code sections 1381 to 1387.

(d) All moneys collected as fees shall be deposited into an administrative expense account or accounts as needed to comply with Title 33 United States Code section 1383(d)(7) and shall be used exclusively to support the activities of the revolving fund.

(e) Moneys in the revolving fund shall be placed in interest bearing investments or otherwise invested at the discretion of the director until such time as the moneys may be needed. All interest accruing from the investment of these moneys shall be credited to the revolving fund; provided that moneys which are pledged as security for payment of revenue bonds may be invested as provided in section 342D-91. [L 1997, c 221, pt of §1]

" **§342D-87 Revolving fund; conditions.** (a) The following conditions shall apply to each project receiving water pollution control financing under this part:

- (1) The project shall conform with the state water quality management plan developed under title 33 United States Code section 1285(j), 1288, 1313(e), 1329, or 1330;
- (2) The project shall be certified by the director as entitled to priority over other eligible projects on the basis of financial and water pollution control needs;
- (3) In the case of wastewater treatment works construction projects, the application or agreement for the loan shall contain:
  - (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the treatment works after its construction;
  - (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to ensure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties; and
  - (C) Any other provisions required by federal or state law or deemed necessary or convenient by the director;
- (4) The county or state agency receiving these funds for a construction project shall require the installation of the low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects; provided that the fixtures

and devices shall be approved by the International Association of Plumbing and Mechanical Officials and shall comply with applicable American National Standards Institute standards and any other standards as may be required by the respective county for all new residential and public buildings; and

- (5) The county receiving these funds shall take specific steps to reduce polluted runoff into state waters through educational and regulatory programs.

(b) The use of federal funds and state matching funds in the revolving fund shall be in conformance with title 33 United States Code sections 1381 to 1387.

(c) The director may make and condition loans from the revolving fund which shall:

- (1) Be made at or below market interest rates; and
- (2) Require periodic payments of principal and interest with repayment commencing not later than one year after completion of the project for which the loan is made;

provided that all loans shall be fully amortized upon the expiration of the term of the loan.

(d) No loan of funds from the revolving fund shall be made unless the loan recipient pledges a dedicated source of revenue for the repayment of the loans. This pledge may be a county's full faith and credit (a general obligation payable from its general fund), special assessments, revenues from an undertaking, system, or improvements, including user charges, or any other source of revenue.

(e) Notwithstanding section 414D-85 to the contrary, the director may hold individual members of the nonprofit organization that received the loan jointly and severally liable for the nonpayment or default of the loan. [L 1997, c 221, pt of §1; am L 2016, c 240, §3]

" **[\$342D-88] Revenue bonds; authorization.** (a) The director of health, with the approval of the governor and the [director of finance], may issue revenue bonds at such times and in such amount or amounts, not to exceed \$250,000,000 in aggregate principal, as may be necessary to carry out the purposes of this part.

(b) All such bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The resolution or certificate providing for the issuance of the bonds may provide that all or part of the proceeds of the bonds shall be deposited in the revolving fund, where the proceeds shall be held and invested in a separate

account or accounts until used in accordance with section 342D-84. [L 1997, c 221, pt of §1]

" **[\$342D-89] Revenue bonds; payment and security.** (a) The revenue bonds shall be payable from and secured by the revenues derived from the benefits of the water pollution control loan program for which the revenue bonds are issued, including:

- (1) Any repayment of eligible loans or other agreements entered into for the water pollution control loan programs;
- (2) Revenues derived from insurance proceeds; and
- (3) Reserve accounts and earnings thereon.

(b) The director may pledge any and all revenues derived from the water pollution control loan program to the punctual payment of the principal, interest, and redemption premiums, if any, on the revenue bonds.

(c) The revenue bonds may be additionally secured by the pledge or assignment of the loans and other agreements or any note, other undertaking, or obligation held by the director or the department to secure the loans.

(d) The director may issue such types of bonds as the director may determine, including bonds on which the principal and interest are payable exclusively from the income and revenues of the water pollution control loan program. [L 1997, c 221, pt of §1]

" **[\$342D-90] Revenue bonds; amount issued.** The director may include the costs of undertaking, administering, operating, and maintaining the water pollution control loan programs for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the cost of undertaking, administering, operating, and maintaining the loan programs, the director may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultants, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period not to exceed one year beyond the estimated completion of the loan projects for which the bonds are issued. [L 1997, c 221, pt of §1]

" **[\$342D-91] Revenue bonds; investment of proceeds, and redemption.** Subject to any agreement with the holders of its revenue bonds, the director may:

- (1) Invest moneys not required for immediate use, including proceeds from the sale of any revenue bonds, funds held in reserve or sinking funds or any funds not required for immediate disbursement, in property

or securities in which savings banks may legally invest funds subject to their control. No provisions with respect to the investment of moneys or the acquisition, operation, or disposition of property by other public bodies shall be applicable to the director or department unless the legislature shall specifically so state; and

- (2) Purchase revolving fund revenue bonds out of any fund or money available therefor, and hold, cancel, or resell the revenue bonds. [L 1997, c 221, pt of §1]

" **[§342D-92] Trustee; designation; duties.** The director may designate a trustee for each issue of revenue bonds secured under the same indenture; provided that the trustee may be approved by the director of finance. The trustee may have any duties and functions authorized by part III of chapter 39, as deemed necessary, advisable, or expedient by the director for the purposes of this part. [L 1997, c 221, pt of §1]

" **[§342D-93] Trust indenture.** (a) Any trust indenture entered into by the director may contain covenants and provisions as authorized by part III of chapter 39, and approved by the director of finance, as deemed necessary, advisable, or expedient by the director for the purposes of this part.

(b) A trust indenture may also contain provisions deemed necessary, advisable, or expedient by the director to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the water pollution control loan program or in the financing of the costs of administering, operating, or maintaining the water pollution control loan program to which such trust indenture relates. [L 1997, c 221, pt of §1]

## " [PART VI.] DISCHARGES FROM COMMERCIAL PASSENGER VESSELS

**[§342D-101] Definitions.** As used in this part:

"Commercial passenger vessel" means a vessel that carries passengers for hire. The term does not include a vessel:

- (1) Authorized to carry fewer than fifty passengers;
- (2) That does not provide overnight accommodations for at least fifty passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin; or
- (3) Operated by the United States or a foreign government.

"Discharge" means any release, however caused, from a commercial passenger vessel, and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying.

"Hazardous substance" has the same meaning as defined in section 342D-38.

"Hazardous waste" has the same meaning as defined in section 342J-2.

"Large commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for two hundred fifty or more passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin.

"Marine waters of the State" means those waters between the shoreline of the State and any point three nautical miles from the shoreline of the State.

"Offloading" means the removal of a hazardous substance, hazardous waste, or nonhazardous solid waste from a commercial passenger vessel onto or into a controlled storage, processing, or disposal facility or treatment works.

"Other wastewater" means sewage that is stored in or transferred to a ballast tank or other holding area on the vessel that may not be customarily used for storing sewage.

"Passengers for hire" means vessel passengers for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

"Sewage" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain human body waste.

"Small commercial passenger vessel" means a commercial passenger vessel that provides overnight accommodations for two hundred forty-nine or fewer passengers for hire, determined with reference to the number of lower berths and based on an average of two persons per cabin.

"Treated sewage" means sewage that meets all applicable effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended, and regulations adopted under the same.

"Untreated sewage" means sewage that is not treated sewage.

"Vessel" means any form or manner of watercraft, other than a seaplane on the water, whether or not capable of self-propulsion.

"Voyage" means a vessel trip to or from one or more ports of call in the State with the majority of the passengers for hire completing the entire vessel trip. A vessel trip involving stops at more than one port of call is considered a single voyage so long as the majority of passengers for hire complete the entire trip.



"Wastewater" shall have the same meaning as "other wastewater". [L 2005, c 217, pt of §1]

" **[§342D-102] Prohibited discharges; limitations on discharges.** (a) Except as provided in subsection (g), a person may not discharge untreated sewage from a commercial passenger vessel into the marine waters of the State.

(b) Except as provided in subsection (g) or section 342D-111, a person shall not discharge wastewater from a commercial passenger vessel into the marine waters of the State that has suspended solids greater than one hundred milligrams per liter or a fecal coliform count greater than forty colonies per one hundred milliliters except that the department, by rule, may adopt a protocol for retesting for fecal coliform, if this discharge limit for fecal coliform is exceeded, under which a discharger will be considered to be in compliance with the fecal coliform limit if the geometric mean of fecal coliform count in the samples considered under the protocol does not exceed forty colonies per one hundred milliliters. Upon submission by the owner or operator of a large commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection for a period of time that ends not later than December 31, 2006. Upon submission by the owner or operator of a small commercial passenger vessel of a plan for interim protective measures, the department shall extend the time for compliance of that vessel with this subsection.

(c) The department, by rule, may establish numeric or narrative standards for other parameters for wastewater discharged from commercial passenger vessels that are more stringent than the effluent limitation standards and processing requirements of the Federal Water Pollution Control Act, as amended, and regulations adopted under the same. In adopting rules under this subsection, the department shall consider the best available scientific information on the environmental effects of the regulated discharges, the materials and substances handled on the vessels, vessel movement effects, and the availability of new technologies for wastewater.

(d) Except as provided in subsections (f) and (g) or section 342D-111, a person shall not discharge wastewater from a large commercial passenger vessel into the marine waters of the State unless:

- (1) The vessel is underway and proceeding at a speed of not less than six knots;
- (2) The vessel is at least one nautical mile from the nearest shore, except in areas designated by the department;

(3) The discharge complies with all applicable vessel effluent standards established under federal and state law; provided that the standards established under federal law may be adopted by rule by the department; and

(4) The vessel is not in an area where the discharge of wastewater is prohibited.

(e) Except as provided in subsection (g) or section 342D-111, a person may not discharge sewage from a small commercial passenger vessel unless the sewage has been processed through a properly operated and properly maintained marine sanitation device.

(f) Subsection (d) (1) and (2) do not apply to a discharge permitted under federal law.

(g) Subsections (a) to (e) do not apply to discharges made for the purpose of securing the safety of the commercial passenger vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the discharge. [L 2005, c 217, pt of §1]

" **[§342D-103] Prohibited air emissions.** (a) No person shall operate an incinerator of a large commercial passenger vessel in any Hawaiian port for the combustion of any waste materials.

(b) Except as provided under section 342D-106, large commercial passenger vessels shall limit visible emissions, excluding condensed water vapor, to no more than twenty per cent opacity for periods of time exceeding six minutes in any sixty-minute period except for the following:

(1) When the ship is maneuvering to or from the dock or anchor;

(2) In the event of a navigational or safety concern on the ship; or

(3) In the event of an equipment failure; provided that the cruise line shall upon request, provide information to the department that describes the subject equipment, malfunction, corrective actions taken, and the start and end times of the malfunctioning period. [L 2005, c 217, pt of §1]

" **[§342D-104] Information-gathering requirements.** (a) Except as provided under section 342D-111, the owner or operator of a commercial passenger vessel shall maintain records and, upon request of the department, provide to the department a report, with copies of the records related to the period of operation in the marine waters of the State, detailing the dates, times, and locations, and the volumes or flow-rates of

any discharge of sewage or other wastewater into the marine waters of the State, or the opacity of air emissions.

(b) Except as provided under section 342D-111, while a commercial passenger vessel is present in the marine waters of the State, the owner or operator of the vessel shall collect routine samples of the vessel's treated sewage and other wastewater that are being discharged into the marine waters of the State with a sampling technique approved by the department before the sample is collected. The number of routine samples for each vessel to be collected under this subsection shall be the greater of two per calendar year or the number of samples required to be collected under federal laws and regulations for sewage or other wastewater discharges.

(c) Except as provided under section 342D-111, while a commercial passenger vessel is present in the marine waters of the State, the department through an independent contractor may collect additional samples of the vessel's treated sewage that are being discharged into the marine waters of the State, or monitor the opacity of air emissions.

(d) Except as provided under section 342D-111, the owner or operator of a vessel required to collect samples under subsection (b) shall, as required by the department, have the samples tested. Tests required may include tests for fecal coliform, ammonia, residual chlorine, pH (degree of acidity or alkalinity), chemical oxygen demand, biochemical oxygen demand, total suspended solids, and any other parameters as required by the department. An analytical testing method approved by the department before the testing is conducted shall be used. A laboratory used for testing under this subsection shall agree not to disclose the testing results to any person other than to the department, the United States Coast Guard, or the owner or operator of the vessel.

(e) The owner or operator of a commercial passenger vessel shall pay for all routine sampling under subsection (b), additional sampling under subsection (c), and for the testing of routine samples.

(f) If the owner or operator of a commercial passenger vessel, when complying with another state or federal law that requires substantially equivalent information gathering, has gathered the type of information required under subsection (a), (b), or (d), the owner or operator shall be considered to be in compliance with that subsection so long as the information is also provided to the department. The department shall establish, by rule, requirements for determining substantially equivalent information gathering. [L 2005, c 217, pt of §1]

" **[\$342D-105] Recordkeeping requirements.** An owner or operator subject to section 342D-104 shall record the information required to be gathered under that section and shall maintain the records for three years after the date the information was gathered. [L 2005, c 217, pt of §1]

" **[\$342D-106] Reporting requirements.** (a) An owner or operator of a commercial passenger vessel who becomes aware of a discharge in violation of section 342D-102 shall immediately report that discharge to the department. The report shall not be deemed to be privileged information.

(b) Before operating a commercial passenger vessel in the marine waters of the State, the owner or operator of the vessel shall provide to the department a plan that describes the vessel's policies and procedures for:

- (1) Offloading in the State or disposing into the marine waters of the State of nonhazardous solid waste other than sewage; and
- (2) Offloading of hazardous waste or a hazardous substance from the vessel while the vessel is operating in the marine waters of the State to the extent that the offloading is not covered by subsection (d).

(c) Within twenty-one days after the testing required under section 342D-104(d), the owner or operator of a commercial passenger vessel shall submit a written report to the department that contains the measurements required under section 342D-104(d) and describes the sampling technique and analytical testing methods used. The information in the report required under this subsection may be provided by referring to, and including copies of, other reports that are required by substantially equivalent state or federal reporting requirements. The department shall establish, by rule, requirements for determining substantially equivalent information gathering.

(d) If the owner or operator of a commercial passenger vessel operating in the marine waters of the State is required by the laws of the United States to file a report or provide notice of a discharge or offloading of a hazardous waste or hazardous substance that was generated, discharged, or offloaded while the vessel was operating in the marine waters of the State, the owner or operator shall submit to the department a copy of the report or notice within twenty-one days after having provided the report or notice to an agency of the United States.

(e) If the owner or operator of a commercial passenger vessel operating in the marine waters of the State is required by the administrator of the Environmental Protection Agency or the secretary of the federal department in which the United

States Coast Guard is operating to collect samples and test sewage or opacity of air emissions and keep records of the sampling and testing, then the owner or operator, within twenty-one days after the sewage or opacity of air emissions is tested, shall submit to the department a copy of the records.

(f) Upon request of the department, the information required under this section shall be submitted electronically.

(g) This section does not relieve the owner or operator of a commercial passenger vessel from other applicable reporting requirements of state or federal law.

(h) The requirements of this section are subject to alternative terms and conditions established under section 342D-111. [L 2005, c 217, pt of §1]

" **[§342D-107] Memorandum of understanding; recognition**

**program.** (a) Nothing contained in this part shall prevent the State from:

- (1) Entering into voluntary agreements with any owners or operators of commercial passenger vessels, or their representatives, for the purpose of controlling pollution outside the marine waters of the State; or
- (2) Adopting pollution controls more stringent than those contained in this part.

(b) The department may engage in efforts to encourage and recognize superior environmental protection efforts made by the owners or operators of commercial passenger vessels that exceed the requirements established by law. [L 2005, c 217, pt of §1]

" **[§342D-108] Exemption for vessels in innocent passage.**

This part does not apply to a commercial passenger vessel that operates in the marine waters of the State solely in innocent passage. For purposes of this section, a vessel is engaged in innocent passage if its operation in marine waters of the State, regardless of whether the vessel is a United States or foreign-flag vessel, would constitute innocent passage under the United Nations Convention on the Law of the Sea 1982, December 10, 1982, United Nations Publication No. E.83.V.5, 21 I.L.M. 1261 (1982), were the vessel a foreign-flag vessel. [L 2005, c 217, pt of §1]

" **[§342D-109] Activities of the department.** The department may engage in the following activities relating to commercial passenger vessels operating in the marine waters of the State:

- (1) Direct in-water monitoring of discharges or releases of sewage and direct monitoring of the opacity of air emissions from those vessels;

- (2) Monitoring and studying of direct or indirect environmental effects of those vessels; and
- (3) Researching ways to reduce effects of those vessels on marine waters and other coastal resources. [L 2005, c 217, pt of §1]

" **[§342D-110] Fine schedules for illegal discharges.** (a) Any person who fails to comply with any requirement of this part shall be subject to the fines established by the department pursuant to subsection (b).

(b) The department shall by rule under chapter 91, establish fines for the failure to comply with any requirement of this part. [L 2005, c 217, pt of §1]

" **[§342D-111] Alternative terms and conditions of vessel discharges.** (a) The department may establish alternative terms and conditions of vessel discharges applicable to an owner or operator of a vessel who cannot practicably comply with the standard terms and conditions of vessel discharges under sections 342D-102, 342D-103, 342D-104, and 342D-106 or who wishes to use or test alternative environmental protection equipment or procedures. Except as specified in alternative terms and conditions set by the department under this subsection, the alternative terms and conditions of vessel discharges must require compliance with the standard terms and conditions of vessel discharges under sections 342D-102, 342D-103, 342D-104, and 342D-106. The department, on a case-by-case basis, may set alternative terms and conditions of vessel discharges if:

- (1) The vessel owner or operator demonstrates to the department's reasonable satisfaction that equivalent environmental protection can be attained through other terms or conditions appropriate for the specific configuration or operation of the vessel;
- (2) The vessel owner or operator agrees to make necessary changes to the vessel to allow it to comply with the standard terms and conditions of vessel discharges under sections 342D-102, 342D-103, 342D-104, and 342D-106 but demonstrates to the department's reasonable satisfaction that additional time is needed to make the necessary changes; or
- (3) An experimental technology or method for pollution control of a discharge is being used or is proposed as one of the alternative terms and conditions of vessel discharges, and the department determines that the experimental technology or method has a reasonable

likelihood of success in providing increased protection for the environment.

(b) Alternative terms and conditions of vessel discharges approved by the department under subsection (a), if determined appropriate by the department, may include a waiver by the department of portions of the requirements of sections 342D-102, 342D-103, and 342D-104 for the time period that the department determines to be appropriate. [L 2005, c 217, pt of §1]