

[CHAPTER 342E]
NONPOINT SOURCE POLLUTION MANAGEMENT AND CONTROL

Section

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program; rules

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Note

L 1993, c 345, §4 provides:

"SECTION 4. This [chapter] shall not be construed or interpreted to diminish the scope of chapter 342D, Hawaii Revised Statutes, or the authority of the director of health under chapter 342D."

L 2014, c 218, §8 purports to amend this chapter.

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.

Cross References

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

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 chapter 342D and this chapter. 111 H. 205, 140 P.3d 985.

" **[§342E-1] Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Department" means the department of health.

"Director" means the director of health.

"Nonpoint source pollution" means water pollution that does not originate from a point source.

"Person" means any individual, partnership, firm, association, public or private corporation, federal agency, the State or a county, trust, estate, or any other legal entity.

"Point source pollution" means pollution from any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include

agricultural stormwater discharges and return flows from irrigated agriculture.

"Pollution" means water pollution.

"Program" means the nonpoint source pollution management and control program established within the department pursuant to this chapter.

"State waters" means all waters, fresh, brackish, or salt, around and within the State including, but not limited to, coastal waters, wetlands, streams, rivers, drainage ditches, ponds, reservoirs, canals, groundwaters, and lakes; provided that drainage ditches, canals, ponds, wetlands, and reservoirs required as a part of a water pollution control system or an irrigation system are excluded. [L 1993, c 345, pt of §2]

" **[§342E-2] Nonpoint source pollution management and control program; rules.** (a) There is established within the department a nonpoint source pollution management and control program to administer, enforce, and carry out all laws, rules, and programs relating to nonpoint source pollution in the State. The program may request the assistance of the clean water branch staff of the department, whenever necessary, in administering this chapter and, upon request, shall assist in the implementation and enforcement of chapter 342D.

(b) The nonpoint source pollution management and control program shall administer this chapter through the director. The director may delegate to any person the 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 1993, c 345, pt of §2]

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

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

- (4) Work cooperatively with other state, county, and federal agencies, to facilitate the monitoring of and update the list of waters in the State that cannot reasonably be expected to attain or maintain state water quality standards and goals established under the federal Water Quality Act of 1987 (P.L. 100-4) without additional action to control nonpoint source pollution;
 - (5) Identify those categories of nonpoint sources that add significant pollution to the state waters identified under paragraph (4);
 - (6) Facilitate implementation of the best management practices, programs, and measures to control each category of nonpoint source pollution identified under paragraph (5), and encourage nonpoint source pollution mitigation practices including, but not limited to, the use of non-hazardous substances in the household and agroforestry management;
 - (7) Identify public and private sources of expertise, technical assistance, financial assistance, educational assistance, training, and technology transfer;
 - (8) Convene statewide and regional public forums involving the general public, the regulatory community, and businesses and industries that may contribute to categories of nonpoint source pollution for the purpose of establishing plans, and developing management strategies and other mitigation measures to control and manage nonpoint source pollution;
 - (9) Provide funding for projects to demonstrate the best available technology and best management practices for preventing and mitigating nonpoint source pollution;
 - (10) Provide funding for public initiative projects to encourage education and prevention measures relating to nonpoint source pollution;
 - (11) Propose legislation, alternate funding mechanisms, and new programs to improve the State's capacity to mitigate nonpoint source pollution; and
 - (12) Review environmental assessments and environmental impact statements as defined under section 343-2 for the purposes of commenting on the effects that a proposed action would have on the level of nonpoint source pollution generated in an area.
- (b) In the course of enforcing any rule adopted pursuant to this chapter, the director may:
- (1) Enter and inspect any area to investigate an actual or suspected source of nonpoint pollution, to ascertain

- compliance or noncompliance with any rule or standard adopted by the department pursuant to this chapter;
- (2) Inspect any records kept in accordance with the terms and conditions of rules adopted under this chapter; and
 - (3) Test any waters and aquatic and other life forms that may have been subjected to any form of nonpoint source pollution and assess the environmental effects of the pollution, including the pollution's effects on the quality of the receiving waters and aquatic and other life forms; provided that if the department determines that the effects of the pollution would make it hazardous to consume the water and aquatic or other life forms, the department shall immediately notify the public of the hazard through the news media and by posting warning signs in those areas where the waters and shoreline contain water and aquatic or other life forms that would be hazardous if consumed. [L 1993, c 345, pt of §2]

" **[§342E-4] Civil penalties.** (a) Any person who violates any rule adopted under this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance to and inspection by any duly authorized officer or employee of the department of any building, place, or vehicle shall be fined not more than \$5,000 for each day of such a denial, obstruction, or hampering. Any action taken to impose or collect the penalty provided for in this section shall be considered a civil action.

(c) Any fine or penalty collected shall be placed in the environmental response revolving fund pursuant to [section] 128D-2. [L 1993, c 345, pt of §2]