

GOV. MSG. NO. 1336

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

July 6, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 6, 2023, the following bill was signed into law:

HB1079 HD2 SD2 CD1

RELATING TO WATER POLLUTION
CONTROL.
ACT 233

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on JUL 6 2023

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 1079
H.D. 2
S.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO WATER POLLUTION CONTROL.

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

1 SECTION 1. The purpose of this Act is to amend sections in
2 chapter 342D, Hawaii Revised Statutes, to:

3 (1) Conform with federal definitions and civil penalty
4 amounts pursuant to the Clean Water Act;

5 (2) Consolidate separate water quality certification
6 statutes into one section for clarity;

7 (3) Clarify the authority of the department of health to
8 conduct water quality certifications; and

9 (4) Revise civil penalty amounts to ensure consistency
10 within the department.

11 SECTION 2. Section 342D-1, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By adding four new definitions to be appropriately
14 inserted and to read:

15 ""Act" means the Clean Water Act (formally referred to as
16 the Federal Water Pollution Control Act or Federal Water



1 Pollution Control Act Amendments of 1972), P.L. 92-500, as
2 amended (33 U.S.C. 1251 et seq).

3 "Navigable waters" means the waters of the United States,
4 including the territorial seas.

5 "Territorial seas" means the belt of the seas measured from
6 the line of ordinary low water along that portion of the coast
7 that is in direct contact with the open sea and the line marking
8 the seaward limit of inland waters, and extending seaward a
9 distance of three miles.

10 "Water quality certification" or "certification" means a
11 statement that asserts that a proposed discharge resulting from
12 any activity, including but not limited to the construction or
13 operation of facilities, will not violate applicable water
14 quality standards; water quality related state laws; or water
15 quality related provisions in sections 301, 302, 303, 306, and
16 307 of the Act.

17 "Water quality standards" means provisions of state law
18 that provide for a designated use or designated uses for state
19 waters and water quality criteria for the waters based upon
20 these uses. Water quality standards are to protect the public



1 health or welfare, enhance the quality of water, and serve the
2 purposes of the Act."

3 2. By amending the definition of "state waters" to read:

4 ""State waters" means all waters, fresh, brackish, or salt,
5 around and within the State, including[7] but not limited to[7]
6 coastal waters, wetlands, streams, rivers, drainage ditches,
7 ponds, reservoirs, canals, ground waters, and lakes; provided
8 that drainage ditches, ponds, and reservoirs required as a part
9 of a water pollution control system are excluded."

10 SECTION 3. Section 342D-6, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§342D-6 Permits; procedures for.** (a) An application for
13 any permit required under this chapter shall be in a form
14 prescribed by the director.

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

20 (c) The director shall issue a permit for any term, not
21 exceeding five years, if the director determines that it will be



1 in the public interest; provided that the permit may be subject
2 to any reasonable conditions that the director may prescribe.
3 The director may include conditions in permits or may issue
4 separate permits for management practices for domestic sewage,
5 sewage sludge, and recycled water, regardless of whether the
6 practices cause water pollution. The director, on application,
7 shall renew a permit from time to time, for a term not exceeding
8 five years, if the director determines that it will be in the
9 public interest. The director shall not grant or deny an
10 application for the issuance or renewal of a permit without
11 affording the applicant and any person who commented on the
12 proposed permit during the public comment period an opportunity
13 for a hearing in accordance with chapter 91. A request for a
14 hearing and any judicial review of the hearing shall not stay
15 the effect of the issuance or renewal of a permit unless
16 specifically ordered by the director or an environmental court.

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



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

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

12 (e) The director, on the director's own motion or the
13 application of any person, may modify, suspend, revoke, or
14 revoke and reissue any sludge permit after affording the
15 permittee an opportunity for a hearing in accordance with
16 chapter 91, and consistent with title 40 Code of Federal
17 Regulations section 501.15(c) (2) and (3) and (d) (2).

18 (f) The director shall ensure that the public receives
19 notice of each application for a permit to control water
20 pollution. The director may hold a public hearing before ruling
21 on an application for a permit to control water pollution if the



1 director determines the public hearing to be in the public
2 interest. In determining whether a public hearing would be in
3 the public interest, the director shall be guided by title 40
4 Code of Federal Regulations section 124.12(a).

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

18 (h) No applicant for a modification or renewal of a permit
19 shall be held in violation of this chapter during the pendency
20 of the applicant's application so long as the applicant acts
21 consistently with the permit previously granted, the application



1 and all plans, specifications, and other information submitted
2 as part thereof.

3 ~~[(i) The department shall not require a water quality~~
4 ~~certification pursuant to section 401 of the federal Clean Water~~
5 ~~Act under this chapter for any applicant of the small-seale~~
6 ~~beach restoration program that has received notice of~~
7 ~~authorization to proceed from the department of land and natural~~
8 ~~resources' office of conservation and coastal lands.]"~~

9 SECTION 4. Section 342D-6.5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§342D-6.5 Hawaiian loko i'a.** ~~[(a)]~~ The department shall
12 process applications for permits and water quality
13 certifications for the reconstruction, restoration, repair, or
14 reuse of any loko i'a, or Hawaiian fishpond as defined in section
15 183B-1, before all other permits and certifications. The
16 director shall render a decision on the completeness of any
17 application for that permit or water quality certification
18 within thirty days of receipt. Applications for loko i'a
19 reconstruction, restoration, or repair that are incomplete shall
20 be denied without prejudice. The director shall render a
21 decision on any complete application for a permit or water



1 quality certification for any loko i'a within one hundred fifty
2 days.

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

10 ~~(c) For purposes of this section:~~

11 ~~"Water quality certification" means state certification~~
12 ~~pursuant to section 401 of the federal Clean Water Act.]"~~

13 SECTION 5. Section 342D-9, Hawaii Revised Statutes, is
14 amended by amending subsections (a) and (b) to read as follows:

15 "(a) If the director determines that any person has
16 violated or is violating this chapter, any rule adopted pursuant
17 to this chapter, or any permit, water quality certification, or
18 variance issued pursuant to this chapter, the director:

19 (1) Shall cause written notice to be served upon the
20 alleged violator or violators. The notice shall
21 specify the alleged violation and may contain an order



1 specifying a reasonable time during which that person
2 shall be required to take any measures that may be
3 necessary to correct the violation and to give
4 periodic progress reports; provided that if all
5 attempts of service of process upon the alleged
6 violator or violators are unsuccessful by personal
7 [~~delivery~~] service and by certified[~~, registered, or~~
8 ~~express~~] mail, notice may be given via a posting on a
9 searchable government website and a sign conspicuously
10 posted on the property, if appropriate;

11 (2) May require that the alleged violator or violators
12 appear before the director for a hearing at a time and
13 place specified in the notice and answer the charges
14 complained of; and

15 (3) May impose penalties as provided in section 342D-31 by
16 sending written notice, either by certified mail or by
17 personal service, to the alleged violator or violators
18 describing the violation.

19 (b) If the director determines that any person is
20 continuing to violate this chapter, any rule adopted pursuant to
21 this chapter, or any permit, water quality certification, or



1 variance issued pursuant to this chapter after having been
2 served notice of violation, the director:

- 3 (1) Shall cause written notice to be served upon the
4 alleged violator or violators. The notice shall
5 specify the alleged violation and shall contain an
6 order requiring that person to submit a written
7 schedule within thirty days specifying the measures to
8 be taken and the time within which [~~such~~] the measures
9 shall be taken to bring that person into compliance
10 with this chapter, any rule adopted pursuant to this
11 chapter, or any permit, water quality certification,
12 or variance issued pursuant to this chapter;
- 13 (2) Shall accept or modify the submitted schedule within
14 thirty days of receipt of the schedule. Any schedule
15 not acted upon after thirty days of receipt by the
16 director shall be deemed accepted by the director;
- 17 (3) Shall issue to the alleged violator or violators a
18 cease and desist order against the activities that
19 violate this chapter, any rule adopted pursuant to
20 this chapter, or any permit, water quality
21 certification, or variance issued pursuant to this



1 chapter if that person does not submit a written
2 schedule to the director within thirty days. This
3 order shall remain in effect until the director
4 accepts the written schedule; and

5 (4) May impose penalties as provided in section 342D-31 by
6 sending a notice in writing, either by certified mail
7 or by personal service, to the alleged violator or
8 violators describing the violation."

9 SECTION 6. Section 342D-30, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§342D-30 Civil penalties.** (a) Any person who violates
12 this chapter, any rule, or any term or condition of a permit,
13 water quality certification, or variance issued pursuant to this
14 chapter shall be fined not more than [~~\$25,000~~] \$60,000 for each
15 separate offense. Each day of each violation shall constitute a
16 separate offense. Any action taken in environmental court to
17 impose or collect the penalty provided for in this section shall
18 be considered a civil action. In determining the amount of a
19 civil penalty, the environmental court shall consider the
20 seriousness of the violation or violations[~~]~~; the economic
21 benefit, if any, resulting from the violation[~~]~~; any history of



1 these violations[~~7~~]; any good-faith efforts to comply with the
2 applicable requirements[~~7~~]; the economic impact of the penalty
3 on the violator[~~7~~]; and any other matters that justice may
4 require. It shall be presumed that the violator's economic and
5 financial conditions allow payment of the penalty, and the
6 burden of proof of the contrary [~~is~~] shall be on the violator.

7 (b) Any person who denies, obstructs, or hampers the
8 entrance or inspection by any duly authorized officer or
9 employee of the department of any building, place, or vehicle
10 that the officer or employee is authorized to enter and inspect
11 shall be fined not more than [~~\$10,000~~] \$25,000 for each day of
12 denial, obstruction, or hampering. Any action taken in
13 environmental court to impose or collect the penalty provided
14 for in this subsection shall be considered a civil action."

15 SECTION 7. Section 342D-50, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By amending subsection (a) to read:

18 "(a) No person, including any public body, shall discharge
19 any water pollutant into state waters, or cause or allow any
20 water pollutant to enter state waters except in compliance with
21 this chapter, rules adopted pursuant to this chapter, or a



1 permit, water quality certification, or variance issued by the
2 director."

3 2. By amending subsection (d) to read:

4 "(d) No person, including any public body, shall violate
5 any rule adopted pursuant to this chapter or any permit, water
6 quality certification, or variance issued or modified pursuant
7 to this chapter."

8 SECTION 8. Section 342D-53, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~§~~342D-53~~]~~ Certifying agency~~[-]~~ and water quality

11 certification. (a) Water quality certification shall be
12 required pursuant to section 401 of the Act for any applicant
13 for a federal license or permit to conduct any activity,
14 including the construction or operation of facilities, that may
15 cause any discharge into navigable waters.

16 (b) The director may act as a certifying agency~~[, as~~
17 ~~defined in 40 Code of Federal Regulations 121.1(e) (1985)]~~.

18 (c) The director shall adopt and enforce rules, pursuant
19 to chapter 91, to administer water quality certifications.

20 (d) The term of any water quality certification issued by
21 the director shall not exceed five years.



1 (e) The director shall not require a person to apply for a
2 water quality certification if the person:

3 (1) Has received notice of authorization to proceed from
4 the department of land and natural resources' office
5 of conservation and coastal lands under the statewide
6 programmatic general permit for the restoration,
7 repair, maintenance, and operation of loko i'a; or

8 (2) Has received notice of authorization to proceed from
9 the department of land and natural resources' office
10 of conservation and coastal lands under the small-
11 scale beach restoration program.

12 (f) As used in this section, "certifying agency" has the
13 same meaning as "certifying authority" as defined in title 40
14 Code of Federal Regulations section 121.1(e)."

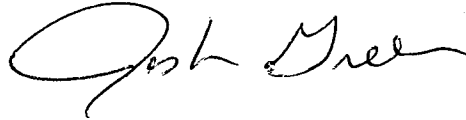
15 SECTION 9. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 10. This Act shall take effect upon its approval.



H.B. NO. 1079
H.D. 2
S.D. 2
C.D. 1

APPROVED this **6th** day of **July**, 2023

A handwritten signature in black ink, appearing to read "Josh Green". The signature is written in a cursive, flowing style.

GOVERNOR OF THE STATE OF HAWAII

HB No. 1079, HD 2, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives




Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI‘I

Date: May 2, 2023
Honolulu, Hawai‘i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai‘i, Regular Session of 2023.


President of the Senate


Clerk of the Senate