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

12 "Water quality standards" means provisions of state law
13 that provide for a designated use or designated uses for state
14 waters and water quality criteria for the waters based upon
15 these uses. Water quality standards are to protect the public
16 health or welfare, enhance the quality of water, and serve the
17 purposes of the Act."

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

19 "State waters" means all waters, fresh, brackish, or salt,
20 around and within the State, including[7] but not limited to[7]
21 coastal waters, wetlands, streams, rivers, drainage ditches,



1 ponds, reservoirs, canals, ground waters, and lakes; provided
2 that drainage ditches, ponds, and reservoirs required as a part
3 of a water pollution control system are excluded."

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

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

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

14 (c) The director shall issue a permit for any term, not
15 exceeding five years, if the director determines that it will be
16 in the public interest; provided that the permit may be subject
17 to any reasonable conditions that the director may prescribe.
18 The director may include conditions in permits or may issue
19 separate permits for management practices for domestic sewage,
20 sewage sludge, and recycled water, regardless of whether the
21 practices cause water pollution. The director, on application,



1 shall renew a permit from time to time, for a term not exceeding
2 five years, if the director determines that it will be in the
3 public interest. The director shall not grant or deny an
4 application for the issuance or renewal of a permit without
5 affording the applicant and any person who commented on the
6 proposed permit during the public comment period an opportunity
7 for a hearing in accordance with chapter 91. A request for a
8 hearing and any judicial review of the hearing shall not stay
9 the effect of the issuance or renewal of a permit unless
10 specifically ordered by the director or an environmental court.

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

- 16 (1) There is a violation of any condition of the permit;
17 (2) The permit was obtained by misrepresentation or there
18 was failure to disclose fully all relevant facts;
19 (3) There is a change in any condition that requires
20 either a temporary or permanent reduction or
21 elimination of the permitted discharge; or



1 (4) It is in the public interest.

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

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

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

20 (g) In determining the public interest regarding permit
21 issuance or renewal, the director shall consider the



1 environmental impact of the proposed action, any adverse
2 environmental effects that cannot be avoided should the action
3 be implemented, the alternatives to the proposed action, the
4 relationship between local short-term uses of the environment
5 and the maintenance and enhancement of long-term productivity,
6 any irreversible and irretrievable commitments of resources that
7 would be involved in the proposed action should it be
8 implemented, and any other factors that the director, by rule,
9 may prescribe; provided that any determination of public
10 interest shall promote the optimum balance between economic
11 development and environmental quality.

12 (h) No applicant for a modification or renewal of a permit
13 shall be held in violation of this chapter during the pendency
14 of the applicant's application so long as the applicant acts
15 consistently with the permit previously granted, the application
16 and all plans, specifications, and other information submitted
17 as part thereof.

18 ~~[(i) The department shall not require a water quality~~
19 ~~certification pursuant to section 401 of the federal Clean Water~~
20 ~~Act under this chapter for any applicant of the small scale~~
21 ~~beach restoration program that has received notice of~~



1 ~~authorization to proceed from the department of land and natural~~
2 ~~resources' office of conservation and coastal lands.] "~~

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

5 "§342D-6.5 Hawaiian loko i'a. [~~(a)~~] The department shall
6 process applications for permits and water quality
7 certifications for the reconstruction, restoration, repair, or
8 reuse of any loko i'a, or Hawaiian fishpond as defined in section
9 183B-1, before all other permits and certifications. The
10 director shall render a decision on the completeness of any
11 application for that permit or water quality certification
12 within thirty days of receipt. Applications for loko i'a
13 reconstruction, restoration, or repair that are incomplete shall
14 be denied without prejudice. The director shall render a
15 decision on any complete application for a permit or water
16 quality certification for any loko i'a within one hundred fifty
17 days.

18 [~~(b)~~] ~~The department shall waive the requirement to obtain~~
19 ~~water quality certification under this chapter for any person~~
20 ~~that has received notice of authorization to proceed from the~~
21 ~~department of land and natural resources office of conservation~~



1 ~~and coastal lands under the statewide programmatic general~~
2 ~~permit for the restoration, repair, maintenance, and operation~~
3 ~~of loko i'a.~~

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

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

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

9 "(a) If the director determines that any person has
10 violated or is violating this chapter, any rule adopted pursuant
11 to this chapter, or any permit, water quality certification, or
12 variance issued pursuant to this chapter, the director:

13 (1) Shall cause written notice to be served upon the
14 alleged violator or violators. The notice shall
15 specify the alleged violation and may contain an order
16 specifying a reasonable time during which that person
17 shall be required to take any measures that may be
18 necessary to correct the violation and to give
19 periodic progress reports; provided that if all
20 attempts of service of process upon the alleged
21 violator or violators are unsuccessful by personal



1 [~~delivery~~] service and by certified[~~, registered, or~~
2 ~~express~~] mail, notice may be given via a posting on a
3 searchable government website and a sign conspicuously
4 posted on the property, if appropriate;

5 (2) May require that the alleged violator or violators
6 appear before the director for a hearing at a time and
7 place specified in the notice and answer the charges
8 complained of; and

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

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

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



- 1 schedule within thirty days specifying the measures to
2 be taken and the time within which [~~such~~] the measures
3 shall be taken to bring that person into compliance
4 with this chapter, any rule adopted pursuant to this
5 chapter, or any permit, water quality certification,
6 or variance issued pursuant to this chapter;
- 7 (2) Shall accept or modify the submitted schedule within
8 thirty days of receipt of the schedule. Any schedule
9 not acted upon after thirty days of receipt by the
10 director shall be deemed accepted by the director;
- 11 (3) Shall issue to the alleged violator or violators a
12 cease and desist order against the activities that
13 violate this chapter, any rule adopted pursuant to
14 this chapter, or any permit, water quality
15 certification, or variance issued pursuant to this
16 chapter if that person does not submit a written
17 schedule to the director within thirty days. This
18 order shall remain in effect until the director
19 accepts the written schedule; and
- 20 (4) May impose penalties as provided in section 342D-31 by
21 sending a notice in writing, either by certified mail



1 or by personal service, to the alleged violator or
2 violators describing the violation."

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

5 "§342D-30 Civil penalties. (a) Any person who violates
6 this chapter, any rule, or any term or condition of a permit,
7 water quality certification, or variance issued pursuant to this
8 chapter shall be fined not more than [~~\$25,000~~] \$ _____ for
9 each separate offense. Each day of each violation shall
10 constitute a separate offense. Any action taken in
11 environmental court to impose or collect the penalty provided
12 for in this section shall be considered a civil action. In
13 determining the amount of a civil penalty, the environmental
14 court shall consider the seriousness of the violation or
15 violations[~~]~~; the economic benefit, if any, resulting from the
16 violation[~~]~~; any history of these violations[~~]~~; any good-faith
17 efforts to comply with the applicable requirements[~~]~~; the
18 economic impact of the penalty on the violator[~~]~~; and any other
19 matters that justice may require. It shall be presumed that the
20 violator's economic and financial conditions allow payment of



1 the penalty, and the burden of proof of the contrary [~~is~~] shall
2 be on the violator.

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

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

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

14 "(a) No person, including any public body, shall discharge
15 any water pollutant into state waters, or cause or allow any
16 water pollutant to enter state waters except in compliance with
17 this chapter, rules adopted pursuant to this chapter, or a
18 permit, water quality certification, or variance issued by the
19 director."

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



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

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

7 "~~[+]§342D-53[+]~~ Certifying agency[-] and water quality
8 certification. (a) Water quality certification shall be
9 required pursuant to section 401 of the Act for any applicant
10 for a federal license or permit to conduct any activity,
11 including the construction or operation of facilities that may
12 cause any discharge into navigable waters.

13 (b) The director may act as a certifying agency[-as
14 defined in 40 Code of Federal Regulations 121.1(e) (1985)].

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

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

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



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

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

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

13 SECTION 9. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 10. This Act shall take effect on June 30, 3000.



Report Title:

Water Pollution Control; State Waters; Water Quality
Certifications

Description:

Revises chapter 342D, Hawaii Revised Statutes, to add definitions that are consistent with federal Clean Water Act regulations. Clarifies the Director of Health's role as a certifying agency, including enforcement of water quality certifications, and increases certain statutory civil penalties. Effective 6/30/3000. (SD2)

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