

## ACT 193

H.B. NO. 1142

A Bill for an Act Relating to Environment.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 340B, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 340B  
[HAWAII LAW FOR MANDATORY CERTIFICATION OF  
PRIVATE CESSPOOL PUMPING FIRMS AND OPERATING  
PERSONNEL IN WASTEWATER TREATMENT PLANTS]  
WASTEWATER TREATMENT PERSONNEL”**

SECTION 2. Section 342D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

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

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

**“§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 [reclaimed] recycled water, whether or not [such] the practices cause water pollution. [Such management practices include treatment, processing, storage, transport, use and disposal.] 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.”

SECTION 4. Section 342D-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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 management practices include treatment, processing, storage, transport, use, and disposal.] 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[, 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 a court.”

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

“(a) The director, in accordance with law, may enter and inspect any building or place to [investigate];

- (1) Investigate an actual or suspected source of water pollution; [to investigate]
- (2) Investigate actual or suspected management practices for domestic sewage, sewage sludge, and recycled water, whether or not [such] the practices cause water pollution; [to ascertain]
- (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 [to make]
- (4) Make reasonable tests in connection therewith.

[Management practices include treatment, processing, storage, transport, use, and disposal.]”

SECTION 6. Section 342D-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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. [The management] Management practices covered in this subsection are those for domestic sewage, sewage sludge, and recycled water, whether or not [such] the practices cause water pollution[, and include treatment, processing, storage, transport, use, and disposal].”

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

“[§342D-16] Other action not barred.] Remedies preserved. No existing civil or criminal remedy for any wrongful action [which] 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.”

SECTION 8. Section 342D-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 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 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."

SECTION 9. Section 342D-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(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; [and]
  - (5) Degree of culpability; and
  - [5)] (6) Such other matters as justice may require."

SECTION 10. Section 342D-55, Hawaii Revised Statutes, is amended to read as follows:

“**§342D-55 Recordkeeping and monitoring requirements.** [The director may require:

- (1) Complete and detailed plans or reports, on existing works, systems, plants, or management practices, and of any proposed addition to, modification of, or alteration of any such works, systems, plants, or management practices, which contain the information requested by the director in the form prescribed by the director. Such plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner and
- (2) The owner or operator of any effluent source, any discharger of effluent, or any person engaged in management practices to:
  - (A) Establish and maintain records;
  - (B) Make reports;
  - (C) Install, use, and maintain monitoring equipment or methods;
  - (D) Sample effluent, state waters, sewage sludge; and
  - (E) Provide such other information as the department may require.]

(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, and sewage sludge; 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) [The management] Management practices covered in this section are those for domestic sewage, sewage sludge, and recycled water, whether or not such practices cause water pollution[, and include treatment, processing, storage, transport, use, and disposal]."

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SECTION 11. Section 340B-21, Hawaii Revised Statutes, is repealed.

SECTION 12. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date. Rules adopted pursuant to the chapters being amended shall remain in effect until the rules are amended, repealed, or replaced.

SECTION 13. All acts passed by the legislature during the regular session of 1999, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act; unless such acts specifically provide that this Act is to be amended.

SECTION 14. Statutory material to be repealed is bracketed.<sup>1</sup> New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval.

(Approved July 2, 1999.)

### Note

1. Edited pursuant to HRS §23G-16.5.