

**ACT 233**

H.B. NO. 1079

A Bill for an Act Relating to Water Pollution Control.

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

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

- (1) Conform with federal definitions and civil penalty amounts pursuant to the Clean Water Act;
- (2) Consolidate separate water quality certification statutes into one section for clarity;
- (3) Clarify the authority of the department of health to conduct water quality certifications; and
- (4) Revise civil penalty amounts to ensure consistency within the department.

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

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

““Act” means the Clean Water Act (formally referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972), P.L. 92-500, as amended (33 U.S.C. 1251 et seq).

“Navigable waters” means the waters of the United States, including the territorial seas.

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

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

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

2. By amending the definition of “state waters” to read:

““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, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a water pollution control system are excluded.”

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

**“§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 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, regardless of whether 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 title 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 title 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 title 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 that 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 that would be involved in the proposed action should it be implemented, and any other factors that 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.

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

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

**“§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 with-

out 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.]”~~

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

“(a) If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any permit, water quality certification, 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]~~ service 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, water quality certification, 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]~~ the measures shall be taken to bring that person into compliance with this chapter, any rule adopted pursuant to this chapter, or any permit, water quality certification, 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, water quality certification, 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.”

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

**“§342D-30 Civil penalties.** (a) Any person who violates this chapter, any rule, or any term or condition of a permit, water quality certification, or variance issued pursuant to this chapter shall be fined not more than ~~[\$25,000]~~ \$60,000 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]~~ shall be 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]~~ \$25,000 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.”

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

1. By amending subsection (a) to read:

“(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, water quality certification, or variance issued by the director.”

2. By amending subsection (d) to read:

“(d) No person, including any public body, shall violate any rule adopted pursuant to this chapter or any permit, water quality certification, or variance issued or modified pursuant to this chapter.”

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

**“~~[[§342D-53]]~~ Certifying agency[-] and water quality certification.**

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

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

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

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

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

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

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

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

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

(Approved July 6, 2023.)