
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 legislature finds that wetlands are
2 included in the definition of "state waters" in section 342E-1,
3 Hawaii Revised Statutes, and in Hawaii's water quality standards
4 in section 11-54-1, Hawaii Administrative Rules, but are not
5 currently included in the definition of "state waters" in
6 section 342D-1, Hawaii Revised Statutes. Also, wetlands are
7 considered waters of the United States in the Clean Water Act of
8 1972.

9 The purpose of this Act is to:

- 10 (1) Include wetlands in the definition of "state waters"
11 as used in chapter 342D, Hawaii Revised Statutes,
12 relating to water pollution;
- 13 (2) Clarify the director of health's responsibility as a
14 certifying agency as authorized by section 342D-53,
15 Hawaii Revised Statutes;



1 (3) Increase the maximum statutory penalty amount
2 contained in section 342D-30, Hawaii Revised Statutes,
3 to match the federal penalty amount;

4 (4) Increase the penalty for obstructing, denying, or
5 hampering the entry of authorized inspectors to match
6 the penalty enacted in section 342B-47, Hawaii Revised
7 Statutes; and

8 (5) Consolidate water quality certification requirements
9 in statute.

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

12 1. By adding five new definitions to be appropriately
13 inserted and to read:

14 ""Act" means the Clean Water Act (formally referred to as
15 the Federal Water Pollution Control Act or Federal Water
16 Pollution Control Act Amendments of 1972), P.L. 92-500, as
17 amended.

18 "Navigable waters" means the waters of the United States,
19 including the territorial seas.

20 "Territorial seas" means the belt of the seas measured from
21 the line of ordinary low water along that portion of the coast



1 that is in direct contact with the open sea and the line marking
2 the seaward limit of inland waters and extending seaward a
3 distance of three miles.

4 "Water quality certification" or "certification" means a
5 statement that asserts that a proposed discharge resulting from
6 an activity will not violate applicable water quality standards,
7 any other appropriate requirement of state law, or the
8 applicable provisions of sections 301, 302, 303, 306 and 307 of
9 the Act.

10 "Water quality standards" means provisions of state law
11 that consist of a designated use or designated uses for state
12 waters and water quality criteria for such waters based upon
13 such uses."

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

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



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

3 **"§342D-6 Permits; procedures for.** (a) An application for
4 any permit required under this chapter shall be in a form
5 prescribed by the director.

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

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



1 application for the issuance or renewal of a permit without
2 affording the applicant and any person who commented on the
3 proposed permit during the public comment period an opportunity
4 for a hearing in accordance with chapter 91. A request for a
5 hearing and any judicial review of the hearing shall not stay
6 the effect of the issuance or renewal of a permit unless
7 specifically ordered by the director or an environmental court.

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

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

20 The public interest excludes any reason less stringent than
21 the causes for permit modification, revocation, and termination,



1 or revocation and reissuance identified in title 40 Code of
2 Federal Regulations section 122.62 or 122.64.

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

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

17 (g) In determining the public interest regarding permit
18 issuance or renewal, the director shall consider the
19 environmental impact of the proposed action, any adverse
20 environmental effects that cannot be avoided should the action
21 be implemented, the alternatives to the proposed action, the



1 relationship between local short-term uses of the environment
2 and the maintenance and enhancement of long-term productivity,
3 any irreversible and irretrievable commitments of resources that
4 would be involved in the proposed action should it be
5 implemented, and any other factors that the director, by rule,
6 may prescribe; provided that any determination of public
7 interest shall promote the optimum balance between economic
8 development and environmental quality.

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

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



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

3 **"§342D-6.5 Hawaiian loko i'a.** [~~(a)~~] The department shall
4 process applications for permits and water quality
5 certifications for the reconstruction, restoration, repair, or
6 reuse of any loko i'a, or Hawaiian fishpond as defined in section
7 183B-1, before all other permits and certifications. The
8 director shall render a decision on the completeness of any
9 application for that permit or water quality certification
10 within thirty days of receipt. Applications for loko i'a
11 reconstruction, restoration, or repair that are incomplete shall
12 be denied without prejudice. The director shall render a
13 decision on any complete application for a permit or water
14 quality certification for any loko i'a within one hundred fifty
15 days.

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



1 ~~permit for the restoration, repair, maintenance, and operation~~
2 ~~of loko i'a.~~

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

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

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

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

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



1 ~~express~~] mail, notice may be given via a posting on a
2 searchable government website and a sign conspicuously
3 posted on the property, if appropriate;

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

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

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

14 "**§342D-30 Civil penalties.** (a) Any person who violates
15 this chapter, any rule, or any term or condition of a permit or
16 variance issued pursuant to this chapter shall be fined [~~not~~] no
17 more than [~~\$25,000~~] \$56,460 for each separate offense. Each day
18 of each violation shall constitute a separate offense. Any
19 action taken in environmental court to impose or collect the
20 penalty provided for in this section shall be considered a civil
21 action. In determining the amount of a civil penalty the



1 environmental court shall consider the seriousness of the
2 violation or violations, the economic benefit, if any, resulting
3 from the violation, any history of these violations, any good-
4 faith efforts to comply with the applicable requirements, the
5 economic impact of the penalty on the violator, and any other
6 matters that justice may require. It shall be presumed that the
7 violator's economic and financial conditions allow payment of
8 the penalty, and the burden of proof of the contrary is on the
9 violator.

10 (b) Any person who denies, obstructs, or hampers the
11 entrance or inspection by any duly authorized officer or
12 employee of the department of any building, place, or vehicle
13 that the officer or employee is authorized to enter and inspect
14 shall be fined [~~not~~] no more than [~~\$10,000~~] \$25,000 for each day
15 of denial, obstruction, or hampering. Any action taken in
16 environmental court to impose or collect the penalty provided
17 for in this subsection shall be considered a civil action."

18 SECTION 7. Section 342D-53, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§342D-53[+] Certifying agency[-] and water quality
21 certification. (a) Water quality certification shall be



1 required pursuant to section 401 of the Act for any applicant
2 for a federal license or permit to conduct any activity,
3 including the construction or operation of facilities that may
4 result in any discharge into navigable waters.

5 (b) The director may act as a certifying agency, as
6 defined in title 40 Code of Federal Regulations section
7 121.1(e) (1985).

8 (c) The director shall adopt and enforce rules, pursuant
9 to chapter 91, to administer water quality certification
10 consistent with section 401 of the Act, federal rules and
11 regulations adopted pursuant to section 401 of the Act, and this
12 chapter.

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

15 (e) The director shall not require a person to apply for a
16 water quality certification for the following activities:

17 (1) If the person has received notice of authorization to
18 proceed from the department of land and natural
19 resources office of conservation and coastal lands
20 under the statewide programmatic general permit for



1 the restoration, repair, maintenance, and operation of
2 loko i'a; or

3 (2) If a person has received notice of authorization to
4 proceed from the department of land and natural
5 resources office of conservation and coastal lands
6 under the small-scale beach restoration program.

7 (f) As used in this section, "certifying agency" has the
8 same meaning as "certifying authority" as defined in title 40
9 Code of Federal Regulations section 121.1(e), which became
10 effective on September 11, 2020."

11 SECTION 8. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 9. This Act shall take effect on January 1, 2222.

14



Report Title:

Water Pollution Control; Water Quality Certification and Enforcement; Penalties; Department of Health

Description:

Adds, amends, and reorganizes sections in chapter 342D, Hawaii Revised Statutes, to consolidate water quality certification requirements and include wetlands in the definition of "state waters". Clarifies the director of health's responsibility as a certifying agency. Increases maximum statutory civil penalties to match the amounts of federal penalties and the state penalty. Effective 1/1/2222. (HD2)

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