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# 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-scale  
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.



**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. (CD1)

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