## HOUSE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF HEALTH TO ADOPT RULES FOR A PERMIT TO DISCHARGE POLLUTANTS THAT INCLUDE THE MAJOR FACTORS THAT ARE CONSIDERED IN IDENTIFYING THE FUNCTIONAL EQUIVALENT OF A DIRECT DISCHARGE FOR POINT SOURCES OR NON-POINT SOURCES.

WHEREAS, the Clean Water Act was enacted to regulate pollution from point sources into surface waters by requiring a permit through the National Pollutant Discharge System (NPDES); that limits the pollutants that may be emitted by a point source and the treatment steps that are necessary to limit those pollutants; and

6 pollutants; an
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8 WHEREAS,

WHEREAS, the United States Supreme Court held that the Clean Water Act requires a permit when pollutants originating from a point source can be conclusively traced to navigable waters via the "functional equivalent of a direct discharge"; and

WHEREAS, determining "functional equivalent" is complicated by factors such as:

(1) Time and distance a pollutant travels;

(2) The nature of the material through which the pollutant travels; and

(3) The extent to which the concentration of the pollutant changes as it travels; and

WHEREAS, the Court elaborated that functional equivalent permit determinations should preserve the authority of states to regulate groundwater and other non-point sources of pollution; and

WHEREAS, the Department of Health is responsible for proposing rules defining "functional equivalent" relating to the

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discharge of pollutants that require a National Pollution 1 Discharge Elimination System (NPDES) permit; now, therefore, 2 3 4 BE IT RESOLVED by the House of Representatives of the Thirty-second Legislature of the State of Hawaii, Regular 5 Session of 2023, the Senate concurring, that the Department of Health use the ruling of the United States Supreme Court in County of Maui v. Hawaii Wildlife Fund and guidelines established by the Environmental Protection Agency to adopt 9 rules for a permit to discharge that include the major factors 10 that are considered in identifying, for point sources or non-11 point sources, "the functional equivalent of a direct 12 13 discharge"; and 14 BE IT FURTHER RESOLVED that a certified copy of this 15 Concurrent Resolution be transmitted to the Director of Health. 16 17 18 19 OFFERED BY: By Request

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