

ACT 115

H.B. NO. 199

A Bill for an Act Relating to Environmental Quality.

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

SECTION 1. Section 342-1, Hawaii Revised Statutes, is amended by amending the definition of "permit" to read:

"(5) "Permit" means written authorization from the director to discharge waste or to construct, modify, or operate any air pollution source, water pollution source, excessive noise source, or solid waste disposal system. A permit authorizes the grantee to cause, emit or discharge waste or pollution in a manner or amount, or to do any act, not forbidden by this chapter, or by rules and regulations promulgated under this chapter, but requiring review by the department."

SECTION 2. Section 342-1, Hawaii Revised Statutes, is amended by amending the definition of "variance" to read:

"(9) "Variance" means special written authorization from the director to cause, emit, or discharge waste or pollution in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules or regulations promulgated under this chapter."

SECTION 3. Section 342-1, Hawaii Revised Statutes, is amended by amending the definition of "waste" to read:

"(10) "Waste" means sewage, industrial and agricultural matter, excessive noise and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the atmosphere, lands or waters of this State."

SECTION 4. Section 342-7, Hawaii Revised Statutes, is amended to read:

"Sec. 342-7 Variances. (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to standards, and such other information as the department may by rule or regulation prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted upon the request of the department, and the effect or probable effect upon the air and water quality standards and noise level standards established pursuant to this chapter.

(c) Whenever an application is approved, the department shall issue a variance authorizing the emission or discharge of pollutant or noise in excess of applicable standards. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the discharge of waste by the granting of the variance is in the public interest as defined in section 342-6;
- (2) The emission or discharge occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the rules, regulations or standards from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control or abatement of the pollution or excessive noise involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the pollution or excessive noise involved.
- (2) The director may issue a variance for a period not exceeding ten years.
- (3) Every variance granted under this section shall include conditions requiring the grantee to perform air, discharge, effluent, or noise sampling and report the results of such sampling to the department.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding ten years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided, further, that the renewal, and the variance issued in pursuance thereof, shall provide for emission or discharge not greater than that attained pursuant to the terms of the immediately preceding variance

at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within 180 days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this part shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Notwithstanding any provision in this section, no variance shall be granted or renewed pursuant to this part with respect to any discharge of pollutants or wastes which is in violation of the requirements of the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) and the amendments thereto.

(i) Public participation.

(1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed emission, discharge or other proposed activity. Procedures for the circulation of public notices shall include at least the following:

(i) Notice shall be circulated within the geographical areas of the proposed emission, discharge, or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;

(ii) Notice shall be mailed to any person or group upon request; and

(iii) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the state or within a certain geographical area.

(2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director.

(3) The contents of public notices of applications for variances shall include at least the following:

(i) Name, address, phone number or agency issuing the public notice;

(ii) Name and address of each applicant;

(iii) Brief description of each applicant's activities or operations which result in the emission, discharge or other activity described in the variance application (e.g., rock crushing plant, municipal waste treatment plant, raw sugar factory, pineapple cannery);

(iv) A short description of the location of each emission or discharge indicating whether such emission or discharge is new or existing;

(v) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) of this section and any other means by which

- interested persons may influence or comment upon those determinations; and
- (vi) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents.
 - (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2) of this section, he determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed emission, discharge or other proposed activity, or other appropriate area, at the discretion of the director.
 - (5) The director shall hold a public hearing when revising the state implementation plan under section 110(a) (3) of the Federal Clean Air Act, 42 U.S.C. Section 1857c-5 (a) (3), and the regulations promulgated thereunder."

SECTION 5. Chapter 342, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read:

"Sec. 342- Administrative penalties. In addition to any other administrative or judicial remedy provided by this chapter, or by rules and regulations promulgated under this chapter, the director is authorized to impose by order the penalties specified in section 342-11(c). Factors to be considered in imposing an administrative penalty include the nature and history of the violation and of any prior violations, and the opportunity, difficulty, and history of corrective action. It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator. In any judicial proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid."

SECTION 6. Section 342-19, Hawaii Revised Statutes, is amended to read:

"Sec. 342-19 Effect of laws, ordinances, rules, and regulations. (a) All laws, ordinances, rules, and regulations inconsistent with this part shall be void and of no effect.

(b) Any county may adopt ordinances, rules, and regulations governing any matter relating to environmental quality control which is not governed by a rule or regulation of the department adopted pursuant to this part; provided that any county ordinance, rule, or regulation relating to environmental quality control shall be void and of no effect as to any matter regulated by a rule or regulation of the department upon the adoption thereof except as provided in (c).

(c) Any county desiring to administer its own laws, ordinances, rules and regulations on the design, construction and operation of sewerage and treatment facilities may submit to the director a full and complete description of the program it proposes to establish and administer under county law. In addition, the county shall submit a statement from its corporation counsel or county attorney that the laws of such county provide adequate or more stringent

authority to carry out the described program. The director shall approve each such submitted program unless he determines that either adequate authority does not exist or the proposed standards are not equal to or are less stringent than those of the department."

SECTION 7. Section 342-31, Hawaii Revised Statutes, is amended by adding the definition of "pollutant" to read:

"(10) "Pollutant" means dredged spoil, solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt and industrial, municipal, and agricultural waste."

SECTION 8. Section 342-31, Hawaii Revised Statutes, is amended by adding the definition of "waste" to read:

"(11) "Waste" means liquid, gaseous, or solid substance, whether treated or not."

SECTION 9. Section 342-33, Hawaii Revised Statutes, is amended to read:

"Sec. 342-33 Prohibition. No person, including any public body, shall discharge any pollutant into state waters, or cause or allow any pollutant to enter state waters except as in compliance with the provisions of this chapter, rules and regulations promulgated pursuant to this chapter, or a permit issued by the director.

No person, including any public body, shall knowingly establish, extend, or alter any system of drainage, sewage, or water supply, or undertake any project in sewage outfall areas where there may be a possibility of alteration of currents depended upon for dilution without first securing approval in writing from the director."

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date. This Act shall not be construed to invalidate currently existing rules and regulations of the department.

SECTION 11. Material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.*

SECTION 12. This Act shall take effect upon its approval.

(Approved May 31, 1977.)

*Edited accordingly.