

ACT 230

H.B. NO. 2730-86

A Bill for an Act Relating to Environmental Quality Enforcement.

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

SECTION 1. Section 342-8, Hawaii Revised Statutes, is amended to read as follows:

“§342-8 [Cease and desist orders. (a) If the director determines that any person is:

- (1) Violating this chapter; or
- (2) Violating any rule or regulation promulgated under this chapter;

he may 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 the person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports. Any such order shall become final unless no later than twenty days after the date of notice and order are served, the person or persons named therein request in writing a hearing before the director. Upon such request, the director shall require that the alleged violator or violators appear before him for a hearing at a time and place specified in the notice and answer the charges complained of.

In lieu of an order, the director may require that the alleged violator or violators appear before him for a hearing at a time and place specified in the notice and answer the charges complained of.

(b) Enforcement. (a) If the director determines that any person is violating this chapter or violating any rule adopted under 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 such measures as may be necessary to correct the violation and to give periodic progress reports.
- (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.
- (3) May impose penalties as provided in section 342-11 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(b) If the director determines that any person is continuing to violate this chapter or violate any rule adopted under 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 measures shall be taken to bring that person into compliance with the provisions of this chapter or the provisions of any rule adopted under this chapter.
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of such 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 or that violate any rule adopted under this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
- (4) May impose penalties as provided in section 342-11 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.

(c) If the director determines that the person has violated the provisions of an accepted schedule, has violated an order issued under this section, or has continued to violate this chapter or violate any rule adopted under this chapter, the director shall impose penalties as provided in this section by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.

(d) Any order issued under this chapter shall become final, unless no later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall 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.

(e) Any hearing conducted under this section shall be conducted as a contested case under section¹ 91. If after a hearing held pursuant to [subsection (a) of] this section, the director finds that a violation or violations have occurred, [he] the director shall affirm or modify [his] any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or discharges involved, or for the taking of such other corrective action as may be appropriate. If, after hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, [he] the director shall rescind the order[,] or penalty. Any order issued [as part of a notice or] after hearing may prescribe the date or dates by which the violation

or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or discharges.

[(c) Any violation of an order issued by the director may at the discretion of the director subject the violator or violators to the penalties specified in section 342-11 and the injunction remedies specified in section 342-12.]

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable,

[The] the director [is authorized to impose the penalty specified in section 342-11(a) and section 342-11(c) and] may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any 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.

[(d) Nothing in this section shall prevent the director from making efforts to obtain voluntary compliance by warning, conference, or any other appropriate means.

(e) (g) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

(Approved May 27, 1986.)

Note

1. So in original.