

ACT 180

H.B. NO. 1977

A Bill for an Act Relating to the Environment.

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

SECTION 1. Section 340E-8, Hawaii Revised Statutes, is amended:

1. By amending subsection (a) to read as follows:

“(a) Any person who violates section 340E-7 shall be administratively or civilly penalized not more than \$25,000 per day of violation.”

2. By amending subsections (d) and (e) to read as follows:

“(d) The director may enforce this part in either administrative or judicial proceedings:

- (1) Administrative. If the director determines that any person has violated or is violating any provision of this part, any rule adopted thereunder, or any variance, exemption, permit, or other written authorization issued pursuant thereto, the director may have that person served with a notice of violation and an order. The notice shall specify the alleged violation. The order may require that the alleged violator do any or all of the following: cease [and desist from] the violation, pay [a civil] an administrative penalty as specified in this section, or appear before the director at a time and place specified in the order and answer the charges complained of. The order shall become final twenty days after service unless within those twenty days the alleged violator requests in writing a hearing before the director. Upon [such] the request, the director shall specify a time and place for the alleged violator to appear. When the director issues an order for immediate action to protect the public health from an imminent and substantial danger, the department shall provide an opportunity for a hearing within twenty-four hours after service of the order. After a hearing pursuant to this subsection, the director may affirm, modify, or rescind the director’s order as the director deems appropriate. The director may institute a civil action in any court of appropriate jurisdiction for the enforcement of any order issued pursuant to this subsection. In any judicial proceeding to collect the administrative penalty imposed, the director need only show that:
- (A) Notice was given;
 - (B) A hearing was held or the time granted for a hearing expired without a request for a hearing;
 - (C) The penalty was imposed; and
 - (D) The penalty remains unpaid.
- (2) Judicial. The director may institute a civil action in any court of appropriate jurisdiction for injunctive and other relief to prevent violation of this part or any order or regulation issued pursuant to this part, impose and collect civil penalties, collect administrative penalties, or obtain other relief in addition to any other remedy provided for under this section.

(e) Any person who violates section 340E-6 shall be administratively or¹ civilly penalized not more than \$25,000 for each violation.”

SECTION 2. Section 342B-42, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to [recover] collect the administrative penalty which shall be a government realization. In any proceeding to [recover] collect the administrative penalty imposed, the director need only show that:

- (1) Notice was given;

- (2) A hearing was held or the time granted for requesting a hearing has run without such a request;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.”

SECTION 3. Section 342B-44, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342B-44]]~~ **Injunctive and other relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted, condition of a permit, or variance issued pursuant to this chapter, without the necessity of prior revocation of the permit or variance, to impose and collect civil penalties, to collect administrative penalties, or obtain other relief. The court shall have the power to grant relief in accordance with the Hawaii Rules of Civil Procedure.”

SECTION 4. Section 342B-56, Hawaii Revised Statutes is amended by amending subsection (a) to read as follows:

“(a) After June 30, 1995, any person may commence a civil action on that person’s own behalf against:

- (1) Any person (including the State and the director) who is alleged to be in violation of this chapter, including any emission standard or limitation or any order issued by the director;
- (2) The director where there is alleged a failure to perform any act or duty under this chapter which is not discretionary; or
- (3) Any person who proposes to construct or constructs any new or modified major emitting facility without a required permit or who is alleged to be in violation of any condition of such permit.

This subsection shall not apply before April 1, 1996 to violations of permits related to agricultural burning; provided further that the governor may extend this deadline for an additional three months to accomplish the purposes of this Act.”

SECTION 5. Section 342D-1, Hawaii Revised Statutes, is amended to read as follows:

“**§342D-1 Definitions.** As used in this chapter, unless the context otherwise requires:

“Coastal waters” means all waters surrounding the islands of the State from the coast of any island to a point three miles seaward from the coast, and, in the case of streams, rivers, and drainage ditches, to a point three miles seaward from their point of discharge into the sea and includes those brackish waters, fresh waters, and salt waters that are subject to the ebb and flow of the tide.

“Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

“Department” means the department of health.

“Director” means the director of health.

“Domestic sewage” is waste and wastewater from humans or household operations that:¹

- (a) is discharged to or otherwise enters a treatment works; or
- (b) is of a type that is usually discharged to or otherwise enters a treatment works or an individual wastewater system.

Individual wastewater systems include cesspools, septic tanks, and household aerobic units. As used here “waste” means any liquid, gaseous, and solid substance, whether treated or not, and whether or not it pollutes or tends to pollute state waters, and “waste” excludes industrial and agricultural substances that are not combined with substances from humans or household operations. As used here “wastewater” means any liquid “waste,” as used above, whether treated or not.

“Drainage ditch” means that facility used to carry storm runoff only.

“Effluent” means any substance discharged into state waters, publicly owned treatment works, or sewerage systems, including, but not limited to, sewage, waste, garbage, feculent matter, offal, filth, refuse, any animal, mineral, or vegetable matter or substance, and any liquid, gaseous, or solid substances.

“Effluent sources” include, but are not limited to, sewage outfalls, refuse systems and plants, water systems and plants, industrial plants, and contributors to publicly owned treatment works or sewerage systems.

“Industrial user” means a source of water pollutants into a publicly owned treatment works from any nondomestic source regulated under section 307(b), (c), or (d) of the Federal Water Pollution Control Act.

“New source” means any source of water pollution the construction of which is commenced after the adoption of rules prescribing a standard of performance which will be applicable to such source.

“Party” means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

“Permit” means written authorization from the director to discharge waste or to construct, modify, or operate any water pollution source. A permit authorizes the grantee to cause or discharge waste or water pollution in a manner or amount, or to do an act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Pollution” means water pollution.

“Sewage sludge” means any solid, semi-solid, or liquid residue removed during the treatment of municipal wastewater or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced wastewater treatment, scum, septage, portable toilet pumping, Type III Marine Sanitation device pumpings (33 CFR Part 159), and sewage sludge products. Sewage sludge does not include grit, screenings, or ash generated during the incineration of sewage sludge.

“Sewerage system” means pipelines or conduits, pumping stations, and force mains, and all other structures, devices, appurtenances, and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

“Standard of performance” means a standard for the control of the discharge of water pollutants which reflects the greatest degree of effluent reduction which the director determines to be achievable through application of the best demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of water pollutants.

“State waters” means all waters, fresh, brackish, or salt, around and within the State, including, but not limited to, coastal waters, streams, rivers, drainage ditches, ponds, reservoirs, canals, ground waters, and lakes; provided that drainage ditches, ponds, and reservoirs required as a part of a water pollution control system are excluded.

“Treatment works” means any plant or other facility used for the purpose of controlling water pollution.

“Variance” means special written authorization from the director to cause or discharge waste or water 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 adopted under this chapter.

“Waste” means sewage, industrial and agricultural matter, and all other liquid, gaseous, or solid substance, including radioactive substance, whether treated or not, which may pollute or tend to pollute the waters of this State.

“Wastewater” means any liquid waste, whether treated or not, and whether animal, mineral, or vegetable including agricultural, industrial, and thermal wastes.

“Water 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.

“Water pollution” means:

- (1) Such contamination or other alteration of the physical, chemical, or biological properties of any state waters, including change in temperature, taste, color, turbidity, or odor of the waters, or
- (2) Such discharge of any liquid, gaseous, solid, radioactive, or other substances into any state waters,

as will or is likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes and agricultural and industrial research and scientific uses of such waters or as will or is likely to violate any water quality standards, effluent standards, treatment and pretreatment standards, or standards of performance for new sources adopted by the department.”

SECTION 6. Section 342D-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342D-4]]~~ **Duties; rules.** In addition to any other power or duty prescribed by law and in this chapter, the director shall prevent, control, and abate water pollution in the State[.] and may control all management practices for sewage sludge and reclaimed water, whether or not such practices cause water pollution. Such management practices include treatment, processing, storage, transport, use and disposal. In the discharge of this duty, the director may adopt rules pursuant to chapter 91 necessary for the purposes of this chapter. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules.”

SECTION 7. Section 342D-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342D-6]]~~ **Permits; procedures for.** (a) An application for any permit required under this chapter shall be in a form prescribed by the director.

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

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that [such] it will be in the public interest; provided that the permit may be subject to [such] any reasonable conditions [as] that the director may prescribe. The director may include conditions in permits or may issue separate permits for management practices for sewage sludge, whether or not such practices

cause water pollution. Such management practices include treatment, processing, storage, transport, use, and disposal. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that [such is] it will be in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

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

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

The public interest excludes any reason less stringent than the causes for permit modification, revocation, and termination, or revocation and reissuance identified in 40 Code of Federal Regulations section 122.62 or 122.64.

(e) The director shall ensure that the public [receive] receives notice of each application for a permit to control water pollution. The director may hold a public hearing before ruling on an application for a permit to control water pollution if the director determines [such] the public hearing to be in the public interest. In determining whether a public hearing would be in the public interest, the director shall be guided by 40 Code of Federal Regulations section 124.12(a).

(f) In determining the public interest regarding permit issuance or renewal, the director shall consider the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the action be implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, [and] any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director [may], by rule, may prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality.

[(d)] (g) No applicant for a modification or renewal of a permit shall be held in violation of this chapter during the pendency of the applicant's application so long as the applicant acts consistently with the permit previously granted, the application and all plans, specifications, and other information submitted as part thereof."

SECTION 8. Section 342D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The director, in accordance with law, may enter and inspect any building or place to investigate an actual or suspected source of water pollution[.]; to investigate actual or suspected management practices for sewage sludge, whether or not such practices cause water pollution; to ascertain compliance or noncompliance with this chapter[.]; any rule or standard adopted by the department pursuant to this chapter[.]; or any permit or other approval granted by the department pursuant to this chapter[.]; and to make reasonable tests in connection therewith. Management practices include treatment, processing, storage, transport, use, and disposal.”

SECTION 9. Section 342D-9, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to 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] any measures [as] that 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[.]; and
- (3) May impose penalties as provided in section [342D-30] 342D-31 by sending¹ written¹ notice,² either by certified mail or by personal service, to the alleged violator or violators describing [such] the violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to 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 this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter[.];
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of [such] the 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, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to 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[.]; and
- (4) May impose penalties as provided in section [342D-30] 342D-31 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing [such] the violation.”

2. By amending subsection (f) to read as follows:

“(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to [recover] collect the [civil] administrative penalty which shall be a government realization.

In any proceeding to [recover] collect the [civil] administrative penalty imposed, the director need only show that [notice]:

- (1) Notice was given[, a];
- (2) A hearing was held or the time granted for requesting a hearing [has run] expired without [such] a request[, the civil] for a hearing;
- (3) The administrative penalty was imposed[.]; and [that the]
- (4) The penalty remains unpaid.”

SECTION 10.³ Section 342D-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other law to the contrary, if the governor or the director determines that an imminent peril to the public health and safety is or will be caused by the discharge of waste [or], any combination of discharges of waste, or any management practice that [which] requires immediate action, the governor or director, [with the approval of the governor and] without public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop such discharge, or to reduce, stop, or change the management practice, and [or the director] may take any and all other actions as may be necessary. [Such] The order shall fix a place and time, no² later than twenty-four hours thereafter, for a hearing to be held before the director. The management practices covered in this subsection are those for sewage sludge, whether or not such practices cause water pollution, and include treatment, processing, storage, transport, use, and disposal.”

SECTION 11.³ Section 342D-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342D-11]]~~ **Injunctive and other relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance~~[.]~~, to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.”

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

“**§342D-30 Civil penalties.** (a) Any person who violates this chapter or any rule shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this section shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance [and] or inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$5,000 for each day of denial, obstruction, or hampering. Any action taken in court to impose or collect the penalty provided for in this [section] subsection shall be considered a civil action.”

SECTION 13. Section 342D-31, Hawaii Revised Statutes, is amended to read as follows:

“**§342D-31 Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section 342D-30.

- (b) Factors to be considered in imposing an administrative penalty include:
- (1) The nature and history of the violation and of any prior violations;
 - (2) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;
 - (3) The opportunity, difficulty, and history of corrective action;

- (4) Good faith efforts to comply; and
- (5) Such other matters as justice may require.

(c) 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.

[(d) In any judicial proceeding to recover the administrative penalty imposed, the director need only show that:

- (1) Notice was given;
- (2) A hearing was held or the time granted for requesting a hearing has run without such a request;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.]”

SECTION 14. Section 342D-50, Hawaii Revised Statutes, is amended to read as follows:

“[[§342D-50]] Prohibition. (a) No person, including any public body, shall discharge any water pollutant into state waters, or cause or allow any water pollutant to enter state waters except [as] in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.

(b) 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 depending upon for dilution without first securing approval in writing from the director.

(c) No person, including any industrial user, shall discharge any water pollutant or effluent into a publicly owned treatment works or sewerage system in violation of:

- (1) A pretreatment standard established by the department or the publicly owned treatment works; or
- (2) A pretreatment condition in a permit issued by the department or a publicly owned treatment works.

(d) No person, including any public body, shall violate any rule adopted pursuant to this chapter or any permit or variance issued or modified pursuant to this chapter.”

SECTION 15. Section 342D-55, Hawaii Revised Statutes, is amended to read as follows:

“[[§342D-55]] Recordkeeping and monitoring requirements. The director may require:

- (1) Complete and detailed plans or reports, on existing works, systems, [or], plants, or management practices, and of any proposed addition to, modification of, or alteration of any such works, [system, or plant] systems, plants, or management practices, which [contains] contain the information requested by the director in the form prescribed by the director. Such plans or reports shall be made by a competent person acceptable to the director and at the expense of such applicant or owner[;] and
- (2) The owner or operator of any effluent source [or], any discharger of effluent, or any person engaged in management practices to:
 - (A) Establish and maintain records;
 - (B) Make reports;
 - (C) Install, use, and maintain monitoring equipment or methods;
 - (D) Sample effluent [and], state waters, sewage sludge; and

(E) Provide such other information as the department may require.

The management practices covered in this section are those for sewage sludge, whether or not such practices cause water pollution, and include treatment, processing, storage, transport, use, and disposal.”

SECTION 16. Section 342F-7, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) If the director determines that any person has violated or is violating this chapter, [violating] any rule adopted pursuant to this chapter, or [violating] any condition of a permit or variance issued pursuant to 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] any measures [as] that 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[.]; and
- (3) May impose penalties as provided in section [342F-9] 342F-11 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing [such] the violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to 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] the measures shall be taken to bring that person into compliance with [the provisions of] this chapter, [the provisions of] any rule adopted pursuant to this chapter, or the conditions of a permit or variance issued pursuant to this chapter[.];
- (2) Shall accept or modify the submitted schedule within thirty days of receipt of [such] the 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, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to 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[.]; and
- (4) May impose penalties as provided in section [342F-9] 342F-11 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing [such] the violation.”

2. By amending subsection (f) to read as follows:

“(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to [recover] collect the [civil] administrative penalty which shall be a government realization.

In any proceeding to [recover] collect the [civil] administrative penalty imposed, the director need only show that [notice]:

- (1) Notice was given[, a];
- (2) A hearing was held or the time granted for requesting a hearing [has run] expired without [such] a request[, the civil] for a hearing;
- (3) The administrative penalty was imposed[.]; and [that the]
- (4) The penalty remains unpaid.”

SECTION 17. Section 342F-9, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Any person who violates this chapter, any rule adopted pursuant to this chapter, other than vehicular noise control rules, or any permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection, other than the penalty imposed for violations of vehicular noise control rules, shall be considered a civil action.

(c) Any person who denies, obstructs, or hampers the entrance [and] or inspection by any duly authorized officer or employee of the department of any building, place, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 18. Section 342F-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342F-11]]~~ **Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter[,], or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section 342F-9(b)[.] and (c).

(b) Factors to be considered in imposing an administrative penalty include [the]:

- (1) The nature and history of the violation and of any prior violations[, and the];
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action[.];
- (4) Good faith efforts to comply; and
- (5) Any other matters that justice may require.

(c) 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] shall be on the violator.

[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.]”

SECTION 19. Section 342F-12, Hawaii Revised Statutes, is amended to read as follows:

“[[§342F-12]] **Injunctive and other relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance[.], to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 20. Section 342H-7, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit issued pursuant to this chapter, the director may do any one or more of the following:

- (1) Issue an order assessing [a civil] an administrative penalty for any past or current violation;
- (2) Require compliance immediately or within a specified time [period]; and
- (3) Commence a civil action in the circuit court in the circuit in which the violation occurred or the person resides or maintains the person’s principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction[.], the imposition and collection of civil penalties, or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a permit issued under this chapter, and shall state with reasonable specificity the nature of the violation. Any administrative penalties assessed in the order shall be in accordance with section [342H-9.] 342H-10.”

2. By amending subsection (e) to read as follows:

“(e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to [recover] collect the [civil] administrative penalty which shall be a government realization.

In any proceeding to [recover] collect the [civil] administrative penalty imposed, the director need only show that [notice]:

- (1) Notice was given[, a];
- (2) A hearing was held or the time granted for requesting a hearing [has run] expired without [such] a request[, the civil] for a hearing;
- (3) The administrative penalty was imposed[.]; and [that the]
- (4) The penalty remains unpaid.”

SECTION 21. Section 342H-9, Hawaii Revised Statutes, is amended to read as follows:

“**§342H-9 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance [and] or inspection by any duly authorized officer or employee of the department of any building, place, or vehicle which the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 22. Section 342H-10, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342H-10]]~~ **Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter[,], or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section 342H-9(a)[.] and (b).

(b) Factors to be considered in imposing an administrative penalty include [the]:

- (1) The nature and history of the violation and of any prior violations[, and the];
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action[.];
- (4) Good faith efforts to comply; and
- (5) Any other matters that justice may require.

(c) 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] shall be on the violator.

[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.]”

SECTION 23. Section 342H-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342H-11]]~~ **Injunctive and other relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent any violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance[.], to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 24. Section 342J-2, Hawaii Revised Statutes, is amended to read as follows:

“**§342J-2 Definitions.** As used in this chapter, unless the context otherwise requires:

“Any state” means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“Complaint” means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule or order adopted pursuant to this chapter.

“Department” means the department of health.

“Director” means the director of health or the director’s authorized agent.

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous or solid waste into or on any land or water so that hazardous or solid waste or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including ground waters.

“Financial responsibility” means a trust fund, surety bond, insurance, corporate guarantee, or letter of credit provided by owners or operators of hazardous waste treatment, storage, and disposal facilities to assure proper closure, post closure, corrective action, and compensation for injuries to people or damage to property.

“Generator” means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this chapter.

“Hazardous waste” means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in a serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial existing or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Hazardous waste broker” means any person who:

- (1) Acts as an intermediary between:
 - (A) A generator and a transporter; or
 - (B) A generator and a person who treats, stores, or disposes of hazardous waste; or
 - (C) A generator and another broker;
 and
- (2) Performs one or more of the following:
 - (A) Mixes hazardous wastes of different United States Department of Transportation shipping descriptions by placing them into a single container or tank as defined in 40 Code of Federal Regulations Part 260 (provided that a broker who mixes hazardous waste must comply with all statutory and regulatory provisions applicable to generators);
 - (B) Packages or repackages hazardous waste;
 - (C) Labels, marks, or manifests hazardous waste;
 - (D) Performs waste characterization of hazardous waste; or
 - (E) Arranges the storage, treatment, transportation, disposal, or recycling of hazardous waste for a fee based upon the completion of the transaction.

“Hazardous waste management” means the systematic control over the generation, collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

“Hazardous waste management facility” or “facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

“Household waste” means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels, motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds and day user recreation areas).

“Manifest” means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of treatment, storage, or disposal.

“Operator” means the person responsible for the overall operation of a facility.

“Owner” means the person who owns the facility or part of the facility.

“Party” means each person or agency named as party or properly entitled to be a party in any court or agency proceeding.

“Permit” means written authorization from the director for the owner or operator of a proposed or existing hazardous waste management facility to engage in the treatment, storage, or disposal of hazardous waste. A permit authorizes the owner or operator to treat, store, or dispose of hazardous waste in a manner or amount, or to do any act, not forbidden by this chapter or by rules adopted under this chapter, but requiring review by the department.

“Person” means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity.

“Pollution” means hazardous waste pollution.

“RCRA” means the Resource Conservation and Recovery Act, as amended, 42 United States Code §§6901 to 6991i.

“Solid waste” means garbage, refuse, and other discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved material in domestic sewage, irrigation return flows, or industrial discharges which are subject to permit under chapter 342D.

“Storage” means the containment of hazardous waste, temporarily or for a period of years, in a manner which does not constitute disposal.

“Transporter” means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, water, or pipeline.

“Treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or render it nonhazardous, less hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. This term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.”

SECTION 25. Section 342J-7, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) If the director determines that any person has violated or is violating any provisions of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit issued pursuant to this chapter or section 3005 of RCRA, 42 United States Code [§] section 6925, the director may do one or more of the following:

- (1) Issue an order assessing [a civil] an administrative penalty for any past or current violation;
- (2) Require compliance immediately or within a specified time [period]; or
- (3) Commence a civil action in the circuit court in the circuit in which the violation occurred[,] or the person resides[,] or [the] maintains the person's principal place of business [exists] for appropriate relief, including a temporary, preliminary,¹ or permanent injunction[.], the imposition and collection of civil penalties, or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any permit issued under section 3005 of RCRA, 42 United States Code [§] section 6925, by the Administrator of [U.S.] the United States Environmental Protection Agency or under section 342J-5 by the director, and shall state with reasonable specificity the nature of the violation. Any administrative penalties assessed in the order shall be in accordance with section [342J-9.] 342J-10.”

2. By amending subsection (e) to read as follows:

“(e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to [recover] collect the [civil] administrative penalty which shall be a government realization.

In any proceeding to [recover] collect the [civil] administrative penalty imposed, the director need only show that [notice]:

- (1) Notice was given[, a];
- (2) A hearing was held or the time granted for requesting a hearing [has run] expired without [such] a request[, the civil] for a hearing;
- (3) The administrative penalty was imposed[.]; and [that the]
- (4) The penalty remains unpaid.”

SECTION 26. Section 342J-9, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance [and] or inspection by any duly authorized representative of the director, or fails to provide information requested by [such] the representative under section 342J-6 shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 27. Section 342J-10, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342J-10]]~~ **Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter[,] or by rules adopted under this chapter, the director is authorized to impose by order the penalties specified in section 342J-9(a)[.] and (b).

(b) Factors to be considered in imposing an administrative penalty include [the]:

- (1) The nature and history of the violation and of any prior violations[, and the];
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action[.];
- (4) Good faith efforts to comply; and
- (5) Any other matters that justice may require.

(c) 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] shall be on the violator.

[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.]”

SECTION 28. Section 342J-11, Hawaii Revised Statutes, is amended to read as follows:

“**§342J-11 Injunctive and other relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to:

- (1) Address any release of hazardous waste or any hazardous waste constituent pursuant to section 342J-36; [and]
- (2) Prevent any violation of [any provision of] this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit adopted pursuant to this chapter, without the necessity of a prior revocation of the permit[.]; and
- (3) Impose and collect civil penalties, to collect administrative penalties, and obtain other relief.

The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 29. Section 342J-36, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Whenever the director determines that there is or has been a release of hazardous waste or of a hazardous waste constituent into the environment from a hazardous waste management facility or site, the director may issue an order requiring corrective action to protect human health or the environment, or the director may commence a civil action for appropriate relief, including a temporary, preliminary, or permanent injunction[.], the imposition and collection of civil penalties, or other relief. For purposes of enforcement, failure to comply with an order issued pursuant to this chapter shall constitute a violation of a requirement of this chapter.”

SECTION 30. Section 342L-8, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit or variance issued pursuant to this chapter, the director may do one or more of the following:

- (1) Issue an order assessing [a civil] an administrative penalty for any past or current violation;
- (2) Issue an order requiring compliance immediately or within a specified time [period]; or
- (3) Commence a civil action in the circuit court in the circuit in which the violation occurred[,], or the person resides[,], or [the] maintains the person's principal place of business [exists] for appropriate relief, including a temporary, preliminary, or permanent injunction[.], the imposition and collection of civil penalties, or other relief.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of any permit or variance issued under this chapter, and shall state with reasonable specificity the nature of the violation. Any administrative penalties assessed in the order shall be in accordance with [sections 342L-10 and section 342L-11.”

2. By amending subsection (e) to read as follows:

“(e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to [recover] collect the [civil] administrative penalty.

In any proceeding to [recover] collect the [civil] administrative penalty imposed, the director need only show that [notice]:

- (1) Notice was given[, a];
- (2) A hearing was held or the time granted for requesting a hearing [has run] expired without [such] a request[, the civil] for a hearing;
- (3) The administrative penalty was imposed[.]; and [that the]
- (4) The penalty remains unpaid.”

SECTION 31. Section 342L-10, Hawaii Revised Statutes, is amended to read as follows:

“**§342L-10 Penalties.** (a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter shall be fined not more than \$25,000 for each individual tank for each day of each violation. Each day of each violation shall constitute a separate offense. In addition, any person who fails to comply with an order issued under this chapter within the time specified in the order shall be fined not more than \$25,000 for each day of noncompliance with the order. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who:

- (1) Denies, obstructs, or hampers the entrance, inspection, or conduct of release response activities by any duly authorized representative of the department at any building, place, site, facility, vehicle, or structure that the representative is authorized to enter, inspect, or at which the representative is authorized to conduct release response activities; or
- (2) Fails to provide information requested by the representative as required under section 342L-7;

shall be fined not more than \$500 per day of denial, obstruction, hindrance, or failure. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 32. Section 342L-11, Hawaii Revised Statutes, is amended to read as follows:

“**§342L-11 Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter[,] or by rules adopted under this chapter, the director may impose by order the penalties specified in section 342L-10.

(b) Factors to be considered in imposing an administrative penalty include [the]:

- (1) The nature and history of the violation and of any prior violations[, and the];
- (2) The economic benefit, if any, resulting from the violation;

(3) The opportunity, difficulty, and history of [compliance.] corrective action;

(4) Good faith efforts to comply; and

(5) Any other matters that justice may require.

(c) It shall be presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary shall be on the violator.

[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.]”

SECTION 33. Section 342L-12, Hawaii Revised Statutes, is amended to read as follows:

“**§342L-12 Injunctive and other relief.** The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent or stop any violation of this chapter, any rule adopted pursuant to this chapter, or any permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance[.], to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The court may grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 34. Section 342N-6, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) If the director determines that any person has violated or is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to 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] any measures [as] that 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[.]; and
- (3) May impose penalties as provided in section [342N-8] 342N-9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing [such] the violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to 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] the measures shall be taken to bring that person into compliance with [the provisions of] this chapter, [the provisions of] any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter[.];

- (2) Shall accept or modify the submitted schedule within thirty days of receipt of [such] the 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, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to 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[.]; and
- (4) May impose penalties as provided in section [342N-8] 342N-9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing [such] the violation.”

2. By amending subsection (f) to read as follows:

“(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to [recover] collect the [civil] administrative penalty which shall be a government realization.

In any proceeding to [recover] collect the [civil] administrative penalty imposed, the director need only show that [notice]:

- (1) Notice was given[, a];
- (2) A hearing was held or the time granted for requesting a hearing [has run] expired without [such] a request[, the civil] for a hearing;
- (3) The administrative penalty was imposed[.]; and [that the]
- (4) The penalty remains unpaid.”

SECTION 35. Section 342N-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Any person who violates this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

2. By amending subsection (c) to read:

“(c) Any person who denies, obstructs, or hampers the entrance [and] or inspection by any duly authorized officer or employee of the department of any facility, place, storage tank, or vehicle that the officer or employee is authorized to enter and inspect shall be fined not more than \$500. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 36. Section 342N-9, Hawaii Revised Statutes, is amended to read as follows:

“[[§342N-9]] **Administrative penalties.** In addition to any other administrative or judicial remedy provided by this chapter[,] or by rules adopted under this

chapter, the director is authorized to impose by order the penalties specified in section 342N-8(a)[.] and (c).

(b) Factors to be considered in imposing an administrative penalty include [the]:

- (1) The nature and history of the violation and of any prior violations[, and the];
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action[.];
- (4) Good faith efforts to comply; and
- (5) Any other matters that justice may require.

(c) 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] shall be on the violator.

[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.]”

SECTION 37. Section 342N-10, Hawaii Revised Statutes, is amended to read as follows:

“[[§342N-10]] Injunctive and other relief. The director may institute a civil action in any court of competent jurisdiction for injunctive and other relief to prevent a violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, without the necessity of a prior revocation of the permit[.], to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.”

SECTION 38. Section 342P-5, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

“(a) If the director determines that any person has violated or is in violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to 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 the person shall be required to take [such] any measures [as] that may be necessary to correct the violation, and to give periodic progress reports;
- (2) May require the alleged violator or violators to appear before the director for a hearing at a time and place specified in the notice to answer the charges complained of; and
- (3) May impose penalties as provided in [part II] section 342P-21 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit issued pursuant to this chapter, after having been served notice of the 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 the person to submit a written schedule

- within thirty days specifying the measures to be taken and the time within which the measures will be taken to bring the person into compliance with this chapter, any rule adopted pursuant to this chapter, or the conditions of any permit issued pursuant to this chapter;
- (2) Shall accept or modify the submitted schedule within sixty days of receipt of the 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, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to 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 as] the director accepts the written schedule; or
 - (4) May impose penalties as provided in [part II] section 342P-21 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.”

2. By amending subsection (f) to read as follows:

“(f) If the amount of any administrative penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to [recover] collect the [civil] administrative penalty, which shall be a government realization.”

SECTION 39. Section 342P-20, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342P-20]]~~ **Civil penalties.** (a) Any person who violates this chapter, any rule adopted by the department under this chapter, or any condition in a permit issued under this chapter, shall be fined not more than \$10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.

(b) Any person who denies, obstructs, or hampers the entrance [and] or inspection by any duly authorized officer or employee of the department of any building or place that the officer or employee is authorized to enter and inspect, shall be fined not more than \$5,000. Any action taken in court to impose or collect the penalty provided for in this subsection shall be considered a civil action.”

SECTION 40. Section 342P-21, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342P-21]]~~ **Administrative penalties.** (a) In addition to any other administrative or judicial remedy provided by this chapter or rules adopted under this chapter, the director may impose by order the penalties specified in section 342P-20.

(b) Factors to be considered in imposing an administrative penalty shall include [the]:

- (1) The nature and history of the violation and any prior violations[, and the];
- (2) The economic benefit, if any, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action[.];
- (4) Good faith efforts to comply; and
- (5) Any other matters that justice may require.

ACT 180

(c) It shall be presumed that the violator's economic and financial conditions allow payment of the penalty; the burden of proof to the contrary shall be on the violator.

(d) In any judicial proceeding to [recover] collect the [civil] administrative penalty imposed, the director need only show that [notice]:

- (1) Notice was given[, a];
- (2) A hearing was held or the time granted for requesting a hearing [has run] expired without [such] a request[, the civil] for a hearing;
- (3) The administrative penalty was imposed[.]; and [that the]
- (4) The penalty remains unpaid.’’

SECTION 41. Section 342P-26, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§342P-26]]~~ **Injunctive and other relief.** The director may institute a civil action for injunctive and other relief in any court of competent jurisdiction to prevent the violation of this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, without the necessity of a prior revocation of the permit or variance[.], to impose and collect civil penalties, to collect administrative penalties, or to obtain other relief. The court may grant relief in accordance with the Hawaii rules of civil procedure.’’

SECTION 42. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date. Rules adopted pursuant to the chapters being amended shall remain in effect until the rules are amended, repealed, or replaced.

SECTION 43. All acts passed by the legislature during this Regular Session of 1995, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act; unless such acts specifically provide that this Act is to be amended.

SECTION 44. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 45. This Act shall take effect upon its approval.

(Approved June 14, 1995.)

Notes

1. Should be underscored.
2. So in original.
3. Section redesignated.