
A BILL FOR AN ACT

RELATING TO WATER POLLUTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

4 "Variance" means special written authorization from the
5 director to cause or discharge waste or water pollution in a
6 manner [~~or in an amount in excess of applicable standards, or to~~
7 ~~do an act~~] that deviates from the requirements of rules adopted
8 under this chapter.

9 SECTION 2. Section 342D-6, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~§342D-6 Permits; procedures for.~~ (a) No permit shall be
12 issued for continuing discharge of point source pollution into
13 highest quality waters, except for temporary construction. For
14 purposes of this subsection, "point source pollution" shall have
15 the same meaning as in section 342E-1.

16 ~~[(a)]~~ (b) An application for any permit required under
17 this chapter shall be in a form prescribed by the director.



1 ~~(b)~~ (c) The department may require that applications for
2 permits shall be accompanied by plans, specifications, and any
3 other information that it deems necessary in order to determine
4 whether the proposed installation, alteration, or use will be in
5 accord with applicable rules and standards.

6 ~~(e)~~ (d) The director shall issue a permit for any term,
7 not exceeding five years, if the director determines that it
8 will be in the public interest; provided that the permit may be
9 subject to any reasonable conditions that the director may
10 prescribe. The director may include conditions in permits or
11 may issue separate permits for management practices for domestic
12 sewage, sewage sludge, and recycled water, whether or not the
13 practices cause water pollution. The director, on application,
14 shall renew a permit from time to time for a term not exceeding
15 five years if the director determines that it will be in the
16 public interest. The director shall not grant or deny an
17 application for the issuance or renewal of a permit without
18 affording the applicant and any person who commented on the
19 proposed permit during the public comment period an opportunity
20 for a hearing in accordance with chapter 91. A request for a
21 hearing and any judicial review of the hearing shall not stay



1 the effect of the issuance or renewal of a permit unless
2 specifically ordered by the director or ~~[+]an[+]~~ environmental
3 court.

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

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

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

20 ~~[(e)]~~ (f) The director, on the director's own motion or
21 the application of any person, may modify, suspend, revoke, or



1 revoke and reissue any sludge permit after affording the
2 permittee an opportunity for a hearing in accordance with
3 chapter 91, and consistent with 40 Code of Federal Regulations
4 section 501.15(c)(2) and (3) and (d)(2).

5 ~~[(f)]~~ (g) The director shall ensure that the public
6 receives notice of each application for a permit to control
7 water pollution. The director may hold a public hearing before
8 ruling on an application for a permit to control water pollution
9 if the director determines the public hearing to be in the
10 public interest. In determining whether a public hearing would
11 be in the public interest, the director shall be guided by 40
12 Code of Federal Regulations section 124.12(a).

13 ~~[(g)]~~ (h) In determining the public interest regarding
14 permit issuance or renewal, the director shall consider the
15 environmental impact of the proposed action, any adverse
16 environmental effects which cannot be avoided should the action
17 be implemented, the alternatives to the proposed action, the
18 relationship between local short-term uses of the environment
19 and the maintenance and enhancement of long-term productivity,
20 any irreversible and irretrievable commitments of resources
21 which would be involved in the proposed action should it be



1 implemented, and any other factors which the director, by rule,
2 may prescribe; provided that any determination of public
3 interest shall promote the optimum balance between economic
4 development and environmental quality.

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

11 SECTION 3. Section 342D-7, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§342D-7 Variances. (a) A variance may be granted by the
14 director from the provisions of this chapter or any rules
15 adopted under this chapter subject to the requirements set forth
16 in this section. In all variance proceedings, the burden of
17 proving entitlement to a variance shall be on the applicant.

18 ~~[(a)]~~ (b) Every application for a variance shall be made
19 on forms furnished by the department and shall be accompanied by
20 a complete and detailed description of present conditions, how



1 present conditions do not conform to standards, and such other
2 information as the department may by rule prescribe.

3 ~~(b)~~ (c) Each application for a variance shall be
4 reviewed in light of the descriptions, statements, plans,
5 histories, and other supporting information submitted with the
6 application, such additional information as may be submitted
7 upon the request of the department, and the effect or probable
8 effect upon the water quality standards established pursuant to
9 this chapter.

10 ~~(e)~~ (d) Whenever an application is approved, the
11 department shall issue a variance authorizing the discharge of
12 water pollutant in excess of applicable standards. No variance
13 shall be granted by the department unless the application and
14 the supporting information clearly show that:

15 (1) The continuation of the function or operation involved
16 in the discharge of waste occurring or proposed to
17 occur by the granting of the variance is in the public
18 interest as defined in section 342D-6;

19 (2) The discharge occurring or proposed to occur does not
20 substantially endanger human health or safety; and



1 (3) Compliance with the rules or standards from which
2 variance is sought would produce serious hardship
3 without equal or greater benefits to the public.

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

8 (1) If the variance is granted on the ground that there is
9 no practicable means known or available for the
10 adequate prevention, control, or abatement of the
11 water pollution involved, it shall be only until the
12 necessary means for prevention, control, or abatement
13 become practicable and subject to the taking of any
14 substitute or alternate measures that the department
15 may prescribe. No renewal of a variance granted under
16 this subsection shall be allowed without a thorough
17 review of known and available means of preventing,
18 controlling, or abating the water pollution involved.

19 (2) The director may issue a variance for a period not
20 exceeding five years.



1 (3) Every variance granted under this section shall
2 include conditions requiring the grantee to perform
3 discharge or effluent sampling and report the results
4 of such sampling to the department.

5 ~~[(e)]~~ (f) Any variance granted pursuant to this section
6 may be renewed from time to time on terms and conditions and for
7 periods not exceeding five years which would be appropriate on
8 initial granting of a variance; provided that the applicant for
9 renewal has met all of the conditions specified in the
10 immediately preceding variance; and provided further that the
11 renewal, and the variance issued in pursuance thereof, shall
12 provide for discharge not greater than that attained pursuant to
13 the terms of the immediately preceding variance at its
14 expiration. No renewal shall be granted except on application
15 therefor. Any such application shall be made at least one
16 hundred eighty days prior to the expiration of the variance.
17 The director shall act on an application for renewal within one
18 hundred eighty days of the receipt of such application.

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



1 ~~(g)~~ (h) No variance granted pursuant to this chapter
2 shall be construed to prevent or limit the application of any
3 emergency provisions and procedures provided by law.

4 ~~(h)~~ (i) Notwithstanding any provision in this section,
5 no variance shall be granted or renewed pursuant to this chapter
6 with respect to any discharge of water pollutants or wastes that
7 is in violation of the requirements of the Federal Water
8 Pollution Control Act and the amendments thereto.

9 ~~(i)~~ (j) Any application for a variance, submitted
10 pursuant to this chapter, shall be subject to the public
11 participation requirements listed below:

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

18 (A) Notice shall be given within the geographical
19 areas of the proposed discharge or other proposed
20 activity;



- 1 (B) Notice shall be mailed to any person or group
- 2 upon request; and
- 3 (C) The director shall add the name of any person or
- 4 group upon request to a mailing list to receive
- 5 copies of notices for all variance applications
- 6 within the State or within a certain geographical
- 7 area;
- 8 (2) The director shall provide a period of not less than
- 9 thirty days following the date of the public notice
- 10 during which time interested persons may submit their
- 11 written reviews with respect to the variance
- 12 application and the tentative determinations of the
- 13 department, if any. The period for comment may be
- 14 extended at the discretion of the director;
- 15 (3) The contents of public notice of applications for
- 16 variances shall include at least the following:
- 17 (A) Name, address, and phone number of agency issuing
- 18 the public notice;
- 19 (B) Name and address of each applicant;
- 20 (C) Brief description of each applicant's activities
- 21 or operations which result in the discharge or



- 1 other activity described in the variance
2 application (e.g., rock crushing plant, municipal
3 waste treatment plant, raw sugar factory, or
4 pineapple cannery);
- 5 (D) A short description of the location of each
6 discharge indicating whether the discharge is new
7 or existing;
- 8 (E) A brief description of the procedures for the
9 formulation of final determinations, including
10 the thirty-day comment period required by
11 paragraph (2) and any other means by which
12 interested persons may influence or comment upon
13 those determinations; and
- 14 (F) Address and phone number of state agency premises
15 at which interested persons may obtain further
16 information and inspect a copy of the variance
17 applications and supporting and related
18 documents; and
- 19 (4) The director may hold a public hearing if, after
20 reviewing the comments submitted under paragraph (2),
21 the director determines that a public hearing is



1 warranted. Any hearing brought pursuant to this
2 subsection shall be held in the geographical area of
3 the proposed discharge or other proposed activity, or
4 other appropriate area, at the discretion of the
5 director."

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect upon its approval.



Report Title:

Water Pollution; Permits; Variances

Description:

Amends the definition of "variance" under water pollution statutes. Prohibits permits to be issued for continuing discharge of point source pollution into highest quality waters, except for temporary construction. Allows the director to grant a variance pursuant to chapter 342D. Provides that in all variance proceedings the burden of proof is on the applicant.
(SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

