

JAN 25 2023

SENATE CONCURRENT RESOLUTION

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

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

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

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

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17 (1) Time and distance a pollutant travels;
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19 (2) The nature of the material through which the pollutant
20 travels; and
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22 (3) The extent to which the concentration of the pollutant
23 changes as it travels; and
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25 WHEREAS, the Court elaborated that functional equivalent
26 permit determinations should preserve the authority of states to
27 regulate groundwater and other non-point sources of pollution;
28 and

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



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1 discharge of pollutants that require a National Pollution
2 Discharge Elimination System (NPDES) permit; now, therefore,

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4 BE IT RESOLVED by the Senate of the Thirty-second
5 Legislature of the State of Hawaii, Regular Session of 2023, the
6 House of Representatives concurring, that the Department of
7 Health use the ruling of the United States Supreme Court in
8 *County of Maui v. Hawaii Wildlife Fund* and guidelines
9 established by the Environmental Protection Agency to adopt
10 rules for a permit to discharge that include the major factors
11 that are considered in identifying, for point sources or non-
12 point sources, "the functional equivalent of a direct
13 discharge"; and

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15 BE IT FURTHER RESOLVED that a certified copy of this
16 Concurrent Resolution be transmitted to the Director of Health.

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OFFERED BY: 
By Request

