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State NPDES Authority Statutes: *Hawai'i*



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State NPDES Authority Statutes: Hawai'i

HI Rev Stat § 342D Parts I & III

Current through the 2022 legislative session.

§ 342D-1. Definitions.

As used in this chapter, unless the context otherwise requires:

“Available recycled water service” means the existence of an operable recycled water distribution main within one hundred feet of the property line.

“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) Is discharged to or otherwise enters a treatment works; or
- (2) 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.

“Gray water” means any untreated wastewater that has not come into contact with toilet waste. Gray water includes used water from bathtubs, showers, and bathroom wash basins and water from clothes washers and laundry tubs; provided that the water is not contaminated with any household hazardous waste as defined in section 342G-1, hazardous waste as defined in section 342J-2, or any contaminant the department deems inappropriate. Gray water excludes wastewater from food preparation sinks or dishwashers.

“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.

“Management practices” include treatment, processing, storage, transport, use, and disposal.

“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.

“Recycled water” and “reclaimed water” mean treated wastewater that by design is intended or used for a beneficial purpose.

“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 Code of Federal



Regulations 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.

§ 342D-2. Administration.

The department shall administer this chapter through the director. The director may delegate to any person such power and authority vested in the director by this chapter as the director deems reasonable and proper for the effective administration of this chapter, except the power to make rules.

§ 342D-3. Board Membership.

Notwithstanding any law to the contrary, no individual, board, or body of this State which grants permits required under this chapter shall be or include, as a member, any person who receives or has during the previous two years received, a significant portion of the person's income directly or indirectly from permit holders or applicants for a permit; provided that for the purposes of this section, no agency, board, or body of the State shall be considered a permit holder or applicant for a permit.

§ 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 domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution. 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.

§ 342D-5. Rules; Specific.

The director may establish by rule, water quality standards, effluent standards, treatment and pretreatment standards, and standards of performance for specific areas and types of discharges in the control of water pollution, thereby allowing for varying local conditions.

§ 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 permits shall be accompanied by plans, specifications, and any other information that it deems necessary 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 it will be in the public interest; provided that the permit may be subject to any reasonable conditions that the director may prescribe. The director may include conditions in



permits or may issue separate permits for management practices for domestic sewage, sewage sludge, and recycled water, regardless of whether the practices cause water pollution. The director, on application, shall renew a permit from time to time, for a term not exceeding five years, if the director determines that it will be in the public interest. The director shall not grant or deny an application for the issuance or renewal of a permit without affording the applicant and any person who commented on the proposed permit during the public comment period an opportunity for a hearing in accordance with chapter 91. A request for a hearing and any judicial review of the hearing shall not stay the effect of the issuance or renewal of a permit unless specifically ordered by the director or an environmental court.

(d) The director, on the director's own motion or the application of any person, may modify, suspend, revoke, or revoke and reissue any water pollution 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;
- (2) The permit was obtained by misrepresentation or there was failure to disclose fully all relevant facts;
- (3) There is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge; or
- (4) 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 title 40 Code of Federal Regulations section 122.62 or 122.64.

(e) The director, on the director's own motion or the application of any person, may modify, suspend, revoke, or revoke and reissue any sludge permit after affording the permittee an opportunity for a hearing in accordance with chapter 91, and consistent with title 40 Code of Federal Regulations section 501.15(c)(2) and (3) and (d)(2).

(f) The director shall ensure that the public 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 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 title 40 Code of Federal Regulations section 124.12(a).

(g) 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 that 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, any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented, and any other factors that the director, by rule, may prescribe; provided that any determination of public



interest shall promote the optimum balance between economic development and environmental quality.

(h) 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.

(i) The department shall not require a water quality certification pursuant to section 401 of the federal Clean Water Act under this chapter for any applicant of the small-scale beach restoration program that has received notice of authorization to proceed from the department of land and natural resources' office of conservation and coastal lands.

§ 342D-6.5. Hawaiian Loko I'a.

(a) The department shall process applications for permits and water quality certifications for the reconstruction, restoration, repair, or reuse of any loko i'a, or Hawaiian fishpond as defined in section 183B-1, before all other permits and certifications. The director shall render a decision on the completeness of any application for that permit or water quality certification within thirty days of receipt. Applications for loko i'a reconstruction, restoration, or repair that are incomplete shall be denied without prejudice. The director shall render a decision on any complete application for a permit or water quality certification for any loko i'a within one hundred fifty days.

(b) The department shall waive the requirement to obtain water quality certification under this chapter for any person that has received notice of authorization to proceed from the department of land and natural resources office of conservation and coastal lands under the statewide programmatic general permit for the restoration, repair, maintenance, and operation of loko i'a.

(c) For purposes of this section:

"Water quality certification" means state certification pursuant to section 401 of the federal Clean Water Act.

§ 342D-7. Variances.

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

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

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



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

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

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

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

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

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

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

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

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

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

(h) Notwithstanding any provision in this section, no variance shall be granted or renewed pursuant to this chapter with respect to any discharge of water pollutants or wastes that is in



violation of the requirements of the Federal Water Pollution Control Act and the amendments thereto.

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

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

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

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

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

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

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

(A) Name, address, and phone number of agency issuing the public notice;

(B) Name and address of each applicant;

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

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

(E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) and any other means by which interested persons may influence or comment upon those determinations; and

(F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents; and



(4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other proposed activity, or other appropriate area, at the discretion of the director.

§ 342D-8. Inspection of Premises.

(a) The director, in accordance with law, may enter and inspect any building or place to:

- (1) Investigate an actual or suspected source of water pollution;
- (2) Investigate actual or suspected management practices for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution;
- (3) 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
- (4) Make reasonable tests in connection therewith.

(b) The director may require any permittee or holder of a variance or person subject to pretreatment requirements to permit the director or the director's authorized representative upon the presentation of the director's or representative's credentials:

- (1) To enter upon permittee's or variance holder's premises or premises of a person subject to pretreatment requirements in which an effluent source is located or in which any records are required to be kept under the terms and conditions of the permit or variance or pretreatment requirements;
- (2) To inspect any monitoring equipment or method required in the permit or variance or by pretreatment requirements; and
- (3) To sample any discharge of water pollutants or effluent.

(c) No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of water pollution shall be disclosed by the official or employee except as it relates directly to water pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

§ 342-9. Enforcement.

(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 any measures that may be necessary to correct the violation and to give periodic progress reports; provided that if all attempts of service of process upon the alleged violator or violators are unsuccessful by personal delivery and by certified, registered, or express mail, notice may be given via a posting on a searchable government website and a sign conspicuously posted on the property, if appropriate;

(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-31 by sending written notice, 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 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 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 the director accepts the written schedule; and

(4) May impose penalties as provided in section 342D-31 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing the violation.

(c) If the director determines that any person has violated an accepted schedule or an order issued under this section, the director shall impose penalties 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 not 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 chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify 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 a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued 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.

(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 collect the administrative penalty which shall be a government realization.

In any proceeding to 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 expired without a request for a hearing;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(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.

§ 342D-10. Emergency Powers; Procedures.

(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, any combination of discharges of waste, or any management practice that requires immediate



action, the governor or the director, without a public hearing, may order any person causing or contributing to the discharge of waste to immediately reduce or stop the discharge, or to reduce, stop, or change the management practice, and may take any and all other actions as may be necessary. The order shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the director. Management practices covered in this subsection are those for domestic sewage, sewage sludge, and recycled water, whether or not the practices cause water pollution.

(b) Nothing in this section shall be construed to limit any power which the governor or any other officer may have to declare an emergency and act on the basis of such declaration, if such power is conferred by statute or constitutional provision, or inheres in the office.

§ 342D-11. Injunctive and Other Relief.

The director may institute a civil action in any environmental 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 environmental court shall have power to grant relief in accordance with the Hawaii rules of civil procedure.

§ 342D-12. Appeal.

If any party is aggrieved by the decision of the director, the party may appeal in the manner provided in chapter 91 to the circuit environmental court of the circuit in which the party resides or has the party's principal place of business or in which the action in question occurred; provided that the operation of a cease and desist order will not be stayed on appeal unless specifically ordered by [an] environmental court of competent jurisdiction.

§ 342D-13. Fees.

The director may establish reasonable fees for the issuance of permits and variances to cover the cost of issuance thereof and for the implementation and enforcement of the terms and conditions of permits and variances (not including court costs or other costs associated with any formal enforcement action). The fees shall be deposited to the credit of the general fund.

§ 342D-14. Public Records; Confidential Information; Penalties.

Reports submitted to the department on discharges of waste shall be made available for inspection by the public during established office hours unless such reports contain information of a confidential nature concerning secret processes or methods of manufacture. Any officer, employee, or agent of the department acquiring confidential information from the inspection authorized by section 342D-8 who divulges information except as authorized in this chapter or except as ordered by a court or at an administrative hearing regarding an alleged violation of this chapter or of any rule or standard adopted pursuant to this chapter shall be fined not more than \$1,000.



§ 342D-15. Nonliability of Department Personnel.

Notwithstanding any other law to the contrary, no member, officer, or employee of the department shall be criminally liable or responsible under this chapter for any acts done by the member, officer, or employee in the performance of the member's, officer's, or employee's duties; provided that this section shall not apply to violations of section 342D-14.

§ 342D-16. Remedies Preserved.

No existing civil or criminal remedy for any wrongful action that is a violation of any statute or any rule of the department or the ordinance of any county shall be excluded or impaired by this chapter. No existing civil or criminal remedy shall exclude or impair the remedies provided in this chapter.

§ 342D-17. Enforcement by State and County Authorities.

All state and county health authorities and police officers shall enforce this chapter and the rules and orders of the department.

§ 342D-18. Other Powers of Department Not Affected.

The powers, duties, and functions vested in the department under this chapter shall not be construed to affect in any manner the powers, duties, and functions vested in the department under any other law.

§ 342D-19. Effect of Laws, Ordinances, and Rules.

(a) All laws, ordinances, and rules inconsistent with this chapter shall be void and of no effect.

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

(c) Any county desiring to administer its own laws, ordinances, and rules on the design, construction, and operation of sewerage and treatment facilities may submit to the director a full and complete description of the program it proposes to establish and administer under county law. In addition, the county shall submit a statement from its corporation counsel or county attorney that the laws of the county provide adequate authority and the standards are equal to or more stringent than the standards of the department to carry out the described program. The director shall approve each such submitted program unless the director determines that either adequate authority does not exist or the proposed standards are less stringent than those of the department.

§ 342D-20. Priority in Courts.

All actions brought pursuant to this chapter or pursuant to the rules adopted under this chapter shall in the discretion of the court receive priority in the courts of the State.



§ 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 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 depended 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.

§ 342D-50.5. Treated or Raw Sewage; Prohibition.

- (a) Notwithstanding any other law to the contrary, no person, including any public body, shall discharge any treated or raw sewage into state waters after December 31, 2026; provided that this section shall not apply to a sewage treatment plant that:
- (1) Utilizes sewage to produce clean energy pursuant to section 196-10.5; and
 - (2) Is in compliance with this chapter, rules adopted pursuant to this chapter, or a permit or variance issued by the director.
- (b) Nothing in this section shall be construed to:
- (1) Prohibit the use of reclaimed or recycled water for a beneficial purpose as provided by law; or
 - (2) Allow the discharge of treated or raw sewage into state waters in violation of any federal statute, rule, or regulation.

§ 342D-51. Affirmative Duty to Report Discharges.

Any person who has caused an unlawful discharge under section 342D-50(a) has an affirmative duty to report the incident to the director within twenty-four hours of the discharge, unless a valid permit issued under section 342D-6 specifies another reporting period for the specific discharge.



§ 342D-52. Testing of Water and Aquatic and Other Life.

The director may test any water and aquatic and other life that has been subjected to an oil spill or any other form of water pollution and assess the environmental effects of the pollution, including its effects on:

- (1) The quality of the receiving water; and
- (2) Aquatic and other life.

If the department determines that the effects are such that it would be hazardous to consume the aquatic or other life, the department shall immediately notify the public of that hazard through the news media and by posting warning signs in the areas where the water and shoreline contain aquatic or other life that would be hazardous to consume.

§ 342D-53. Certifying Agency.

The director may act as a certifying agency, as defined in 40 Code of Federal Regulations 121.1(e) (1985).

§ 342D-54. Wastewater Treatment Works; Financial Assistance; Grants.

(a) The director may make grants to any county or state agency for the construction of necessary wastewater treatment works and for other projects intended for recycled water or waste management by other than conventional means to prevent or to control the discharge of untreated or inadequately treated sewage or other waste into any state waters.

(b) No grant shall be made for any project unless:

- (1) The project conforms with the state water pollution control plan;
- (2) The project is certified by the director as being entitled to priority over other eligible projects on the basis of financial as well as water pollution control needs;
- (3) In the case of wastewater treatment works, the application for the grant contains the following:
 - (A) Reasonable assurances that the applicant will provide for the proper and efficient operation and maintenance of the wastewater treatment works after its construction; and
 - (B) Reasonable assurances by the applicant that an impact fee structure will be instituted to ensure that new developments pay their appropriate share of the costs of the wastewater treatment works, as determined by the counties;
- (4) The county or state agency receiving these state funds requires the installation of the low flow water fixtures and devices for faucets, hose bibbs, showerheads, urinals, and toilets in all new construction projects, and the fixtures and devices shall be approved by the International Association of Plumbing and Mechanical Officials and shall comply with



applicable American National Standards Institute standards and other standards as may be required by the respective county for all new residential and public buildings; and

(5) The department, where appropriate, determines that the county receiving these funds has taken specific steps to reduce polluted runoff into state waters through educational and regulatory programs.

(c) If federal grant funds are available, the applicant shall be required to pay sixty per cent of the nonfederal share of the estimated reasonable cost of the approved wastewater treatment works as defined by Title 33 United States Code section 1251 et seq. If federal grant funds are not available, the director may make grants up to one hundred per cent of the estimated cost of the project.

(d) Nothing in this section shall restrict the director's authority to make grants to wastewater treatment works or projects granted waivers under Title 33 United States Code section 1311(h).

(e) No moneys used or available for financing under part V shall be used for grants under this section.

(f) No later than twenty days prior to the convening of each regular session of the legislature, the director shall submit to the legislature a financial report addressing the status of each grant made during the last completed fiscal year.

§ 342D-55. Recordkeeping and Monitoring Requirements.

(a) The director may require the owner or operator of any effluent source, works, system, or plant; any discharger of effluent; the applicant for written authorization under this chapter for such sources or facilities; or any person engaged in management practices to:

- (1) Establish and maintain records;
- (2) Make reports and plans that shall cover existing situations and proposed additions, modifications, and alterations;
- (3) Install, use, and maintain monitoring equipment or methods;
- (4) Sample effluent, state waters, sewage sludge, and recycled water; and
- (5) Provide such other information as the department may require.

(b) The director may require that information and items required under subsection (a) be complete and detailed, in a prescribed form, made or prepared by a competent person acceptable to the director, and at the expense of the owner, operator, or applicant.

(c) Management practices covered in this section are those for domestic sewage, sewage sludge, and recycled water, whether or not such practices cause water pollution.

§ 342D-56. Complaints; Hearings; Appointment of Masters.

The director may:



(1) Receive or initiate complaints of water pollution, hold hearings in connection with water pollution, and institute legal proceedings in the name of the State for the prevention, control, or abatement of water pollution; and

(2) Appoint a master or masters to conduct investigations and hearings.

§ 342D-57. Public Participation Activities; Appointment of Hearings Officers.

The director may appoint, without regard to chapter 76, hearings officers to conduct public participation activities, including public hearings and public informational meetings.

§ 342D-58. Consultation and Advice.

The director may consult with and advise:

(1) Any person engaged or intending to be engaged in any business or undertaking whose waste, sewage, or drainage is polluting or may tend to pollute state waters; and

(2) Persons intending to alter or to extend any system of drainage, sewage, or water supply.

§ 342D-59. Research, Educational, and Training Programs.

The director may:

(1) Conduct and supervise research programs for the purpose of determining the causes, effects, and hazards of water pollution, the quality of the receiving water and the means to monitor the quality of water, or to effect the proper disposal of sewage, drainage, and waste;

(2) With the approval of the governor, cooperate with, and receive money from the federal government, or any political subdivision of the State or from private sources for the study and control of water pollution; and

(3) Conduct and supervise state educational and training programs on water pollution prevention, control, and abatement, including the preparation and distribution of information relating to water pollution.

§ 342D-60. Annual Reports.

The director may publish annual reports on the quality of the state waters, which annual report shall include, but not be limited to:

(1) A description of sampling programs and quality control methods procedures;

(2) Statistical analysis and interpretation of the data on an annual basis by specific points (monitoring stations);

(3) Discussion of the results of these analyses to the extent that the implications can be understood by the general public;



(4) Recommendations for the modification of the water quality monitoring program to enhance its effectiveness for maintaining high standards of water quality in the State; and

(5) A note of any significant changes in the quality of state waters.

§ 342D-61. Household Aerobic Unit Approval.

(a) The installation or use of household aerobic units that discharge directly to groundwater are prohibited in the State unless approved by the director.

(b) The director shall approve household aerobic units based on the National Sanitation Foundation/American National Standards Institute Standard 245 for class I aerobic units.

(c) The director may adopt rules, pursuant to chapter 91, necessary for the purposes of this section.

