HAWAII
Enforceable Provisions Applicable to Nonpoint Source Water Pollution

DISCHARGE PROHIBITIONS

Water Pollution Control Law

Hawaii’s water pollution control law includes some provisions that may be used to take enforcement action against nonpoint source discharges that are not permitted or that result in water quality violations.

- Hawaii law prohibits discharges of "any water pollutant into state waters" except in compliance with the law or a permit or variance thereunder.1 This prohibition is not limited to point source discharges. The director of the Department of Health ("DoH") shall issue a permit for a term of up to five years, if "issuance is in the public interest."2 Under this statute, "water pollution" is broadly defined as "discharge of any liquid, gaseous, solid...or other substances into any state waters... likely to create a nuisance or render such waters...harmful...to public health...including harm...to public water supplies, fish and aquatic life and wildlife...or as will or is likely to violate any water quality standards, effluent standards..."3 Where a violation occurs, DoH sends written notice to alleged violator and, if the violation continues, another notice containing an order for corrective action.4 DoH may also modify, suspend or revoke a permit.5 Administrative and civil (up to $10,000 for each offense) penalties are authorized.6 Criminal sanctions are more stringent if the violation was "knowing" rather than "negligent."7

Other Discharge Limitations

- Under Hawaii’s Nonpoint Source Pollution Management and Control statute, DoH has explicit authority to "reduce, control and mitigate nonpoint source pollution,"8 which is defined as "water pollution not originating from a point source."9 This law is in addition to the broad water pollution law described above and "should not be construed or interpreted to diminish the scope of that law."10 DoH is to adopt "water quality standards for specific areas, types of nonpoint source pollution discharges, or management measures..."11 The Director may enforce the rules, enter and inspect areas to investigate sources of nonpoint pollution and determine compliance.12 Civil penalties of up to $10,000 are authorized for each separate offense and each day of violation.13

- State law authorizes the Department of Land and Natural Resources ("DLNR") to adopt rules that prevent "the discharge or throwing into... ocean waters and navigable streams..." substances that are likely to affect the quality of the water or contribute to making these areas "unsightly, unhealthful, or unclean."14 DLNR has authority to conduct searches and seize equipment used in violation of the title. Fines of up to $10,000 are authorized.15 A violator is guilty of a misdemeanor with fines and/or imprisonment, if he fails to appear at the time and place specified under a DLNR summons or citation.16
• The statutory nuisance laws direct that DoH examine "all nuisances... ...and...any and all conditions created or existing which cause or tend to cause sickness or disease or to be dangerous or injurious to health, and shall cause the same to be abated, destroyed, removed, or prevented." 17 Although there are exceptions to the nuisance provision under the Hawaii Right to Farm Act, the exceptions do not apply to water pollution. 18 If a landowner does not comply with a DoH abatement order, then DoH may apply for a judicial order of abatement. DoH may recover expenses incurred for abatement, removal, destruction or prevention of a nuisance. Administrative civil penalties up to $20,000 for each offense are authorized. 19

• Counties have the authority to maintain channels to carry off storm waters and "to remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance." 20 Counties also have the authority to enact and enforce ordinances that "prevent or summarily remove nuisances...and to enforce liens upon the property for the cost to the county of completing the necessary work" where owners fail to comply. 21

Fish/Fisheries Laws

General discharge limitations described above define "water pollution" as including discharges that cause harm to "fish and aquatic life and wildlife." 22 Other fisheries provisions appear limited to prohibiting the introduction of certain substances into state waters "for the purpose of taking aquatic life." 23

OPERATIONAL REQUIREMENTS

Forestry Requirements

• Hawaii laws relating to forestry do not appear to contain enforceable provisions with respect to nonpoint source discharges.

Agriculture Requirements

• County governments, in cooperation with soil and water conservation districts and other state and federal agencies, are to enact ordinances to control soil erosion and sediment, including standards for soil and land uses that identify "criteria, techniques, and methods for the control of erosion and sediment resulting from land disturbing activities." 24 See the Other Discharge Limitations section for authorized sanctions pursuant to DLNR authority.

• Hawaii law has general pesticide licensing and labeling requirements. 25 In addition, every person who sells or distributes restricted use pesticides is required to obtain an annual permit. 26 Refusal to license or cancellation or suspension of licenses are authorized, 27 in particular, when pesticide usage is determined to have unreasonable adverse effects on the environment, specifically when pesticide residues are detected in drinking water. 28 Administrative civil penalties and criminal penalties may result. 29

Development and Other Earth-Disturbing Activities
Hawaii law requires all county ordinances to control soil erosion and sediment from land disturbing activities, and the standards are deemed to be met if the land is managed in accordance with practices acceptable to the local soil and water conservation districts. See the Other Discharge Limitations section for authorized sanctions pursuant to DLNR authority.

No development is allowed in any county within a "special management area" without a permit, although use of land for activities such as cultivating, planting, or harvesting plants and crops for agricultural or forestry purposes is exempt. Variances are authorized for certain activities "that are clearly in the public interest." Civil fines may be imposed, and injunctive relief is available.

Endnotes
2 Hawaii Rev. Stat. 342D-6(c).
16 Hawaii Rev. Stat. 199-6, 199-7(b).
20 Hawaii Rev. Stat. 46.1.5(5).
23 Hawaii Rev. Stat. 188-23(b)(1)-(4).