

REQUEST FOR LEGAL SERVICES

D a t e: November 19, 2024
F r o m: Tom Cook, Chair
Water and Infrastructure Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Caleb P. Rowe, Esq.

Subject: BILL 157 (2024), AMENDING TITLE 14, MAUI COUNTY CODE, TO ESTABLISH ARTICLE 5 RELATED TO THE REGULATION OF STORMWATER DISCHARGE AND POLLUTION CONTROLS (WAI-35)

Background Data: Please see CD1 version of bill. Please submit your response to wai.committee@mauicounty.us with a reference to WAI-35.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY
☐ OTHER:

Requestor's signature  Tom Cook, Chair	Contact Person <u>Jarret Pascual or Carla Nakata</u> (Telephone Extension: <u>7141 or 5519, respectively</u>)
---	--

☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 26, 2024
REASON: For posting on the December 6, 2024, Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: CPR/MJH	ASSIGNMENT NO. 2023-25*	BY: jap
----------------------	-------------------------	---------

TO REQUESTOR: ☒ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL

Date 11/27/2024

By MJH

(Rev. 7/03)

wai:ltr:035acc01:jpp

Attachment

ORDINANCE NO. _____

BILL NO. 157, CD1 (2024)

A BILL FOR AN ORDINANCE AMENDING TITLE 14, MAUI COUNTY CODE,
TO ESTABLISH REGULATIONS ON STORMWATER DISCHARGE AND
POLLUTION CONTROLS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 14, Maui County Code, is amended by adding a new article and new chapters to be appropriately designated and to read as follows:

“Article V. Stormwater Discharge and Pollution Controls

Chapters:

14.80	GENERAL PROVISIONS
14.81	DISCHARGE PROHIBITIONS
14.82	VIOLATIONS, ENFORCEMENT, AND PENALTIES

Chapter 14.80

GENERAL PROVISIONS

Sections:

14.80.010	Purpose.
14.80.020	Administration.
14.80.030	Definitions.
14.80.040	Applicability.

14.80.010 Purpose. A. This article’s purpose is to prohibit activities that may pollute stormwater discharges and certain non-stormwater discharges that could enter the County’s storm-drainage system.

B. This article regulates discharges to the County’s storm-drainage system under applicable State and Federal regulations, including the Clean Water Act, as provided in 33 United States Code section 1251 et seq., and chapters 54 and 55 of title 11, Hawai‘i Administrative Rules, as amended.

C. This article's objectives are to:

1. Regulate the contribution of pollutants to the storm-drainage system by stormwater discharges.
2. Prohibit illicit discharges to the storm-drainage system.
3. Establish the County's authority to carry out inspection, surveillance, monitoring, and enforcement procedures to ensure compliance with this article.

14.80.020 Administration. Except as otherwise provided in this article, the director must administer, implement, and enforce this chapter and may adopt administrative rules under chapter 91, Hawai'i Revised Statutes. Any powers granted to, or duties imposed upon the director may be delegated by the director to other County personnel.

14.80.030 Definitions. This article's words and phrases have the meaning ascribed to them in this section, unless it is apparent from the context that a different meaning is intended. Words, terms, or expressions specific to stormwater not defined in this chapter have the same meanings as defined in chapter 55 of title 11, Hawai'i Administrative Rules, as amended.

"Accidental discharge" means an illicit discharge that is inadvertent and unintentional.

"BMPs" means best management practices.

"Director" means the director of public works or the director's authorized representative.

"Drainageway" means a natural, altered, or improved channel that has intermittent or continuous water flow because of either surface stormwater or groundwater influx, or both, including to channels, streambeds, stream banks, stream mouths, ditches, flumes, and underground drain lines or systems, and any portion of irrigation systems.

"Hazardous spill" means a spill of any material, including any substance, waste, or combination of substance and waste, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, discharged, released, disposed of, or otherwise managed.

"Illicit discharge" means any direct or indirect non-stormwater discharge to the storm-drainage system, except as allowed under section 14.81.010.

“Industrial activity” means an activity subject to NPDES industrial permits as defined in title 40, Code of Federal Regulations, section 122.26 (b)(14), as amended, or any activity of, relating to, or resulting from the industry.

“Intentionally” means acting with a conscious objective to cause the result or engage in the conduct described.

“Knowingly” means acting with an awareness that the conduct of the person is of a nature described or that a circumstance so described exists.

“Maximum extent practicable” means economically achievable measures for the control of the addition of pollutants from contamination sources that reflect the greatest degree of pollutant reduction achievable through the application of the best available pollution-control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

“Non-stormwater discharge” means any discharge that is not composed entirely of stormwater.

“NPDES” means the National Pollutant Discharge Elimination System.

“Premises” means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

“Receiving waters” means creeks, streams, rivers, lakes, estuaries, the ocean, or other bodies of water into which surface water, treated waste, or untreated waste are discharged.

“Responsible party” means the property owner, any person authorized to act on the owner’s behalf, or any person allowing, causing, or contributing to a violation of this article.

“Runoff” means the draining of water from the surface of an area of land, a structure, or any constructed surface.

“Stormwater” means the same as “storm water” as defined in chapter 55 of title 11, Hawai‘i Administrative Rules, as amended.

“Storm-drainage system” means any land or facility by which stormwater is collected or conveyed, including impervious and non-impervious surfaces, roads with other storm-drainage systems, streets, curbs, gutters, inlets, piped storm drains, maintenance holes, ditches, swales, culverts, drainageways, natural and human-made or -altered drainage channels, retention and detention basins, reservoirs, outlets, drywells, infiltration structures, and other drainage structures.

14.80.040 Applicability. A. This chapter applies to all discharges entering the storm-drainage system generated on any developed or undeveloped lands.

B. This chapter’s requirements are in addition to, and do not modify or repeal, any other ordinance, rule, or provision of law.

C. Where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, or provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment must govern.

D. This chapter sets minimum standards for the prevention of water pollution. Compliance with this chapter does not ensure compliance with other provisions of law.

Chapter 14.81

DISCHARGE PROHIBITIONS

Sections:

- 14.81.010 Prohibition of illicit discharges.
- 14.81.020 Discharge response.
- 14.81.030 Best management practices.
- 14.81.040 Right of access.

14.81.010 Prohibition of illicit discharges. A. No person may cause or allow others to cause an illicit discharge into the storm-drainage system or any drainageway within the County. The commencement, conduct, or continuance of any illicit discharge to the storm-drainage system is prohibited except as allowed by appendix K of title 11, chapter 55, Hawai'i Administrative Rules, as amended, if they do not cause or contribute to any violation of water-quality standards.

B. Examples of discharges that are not illicit discharges, include:

1. Water-line flushing.
2. Runoff from irrigation and lawn watering.
3. Diverted stream flows.
4. Rising groundwater; uncontaminated groundwater infiltration, as defined in title 40, Code of Federal Regulations, section 35.2005(b)(20); and uncontaminated pumped groundwater.
5. Discharges from potable water sources.
6. Air-conditioning condensate.
7. Springs.
8. Water from crawlspace pumps, footing drains, and foundation drains.
9. Water from individual residential car washing.
10. Flows from riparian habitats and wetlands.
11. Dechlorinated swimming-pool discharges.
12. Residual street-wash water.

13. Discharges or flows from firefighting activities.
14. Runoff from fire-hydrant flushing.
15. Charity carwashes with the following controls:
 - a. Held on a frequency no greater than monthly by each organization.
 - b. Located at least 200 feet from a sensitive waterbody.
 - c. Runoff filtered through a landscaped area or linear BMPs, such as silt socks or fiber rolls.
 - d. Use of environmentally-friendly soaps only.
16. Runoff from dust-control activities through the appropriate application of water, if the following controls are in place:
 - a. Inlets that could receive the water are protected using appropriate inlet-protection BMPs, such as filter fabric, silt socks, silt fence, or gravel bags.
 - b. Inlet-protection BMPs are regularly inspected to verify they are in good working condition and maintained or replaced as needed and removed when the project is completed.
17. Runoff from washing, including pressure washing, exterior building surfaces and sidewalks, if the following controls are in place:
 - a. Soaps and cleaners are not used if water could reach the storm-drainage system.
 - b. Inlets that could receive the water are protected using appropriate inlet-protection BMPs, such as filter fabric, silt socks, silt fence, or gravel bags.
 - c. Inlet-protection BMPs are regularly inspected to verify they are in good working condition and maintained or replaced as needed and removed when the project is completed.
18. Discharges specified in writing by the director as being necessary to protect public health and safety with BMPs implemented to reduce water pollution to the maximum extent practicable.
19. Dye testing associated with environmental studies sanctioned by a court order or conducted in partnership with any federal, state, or county agency.
20. Discharges authorized under an NPDES permit, waiver, or waste-discharge order issued to the discharger and administered under the Environmental Protection Agency's authority or by the State under authority delegated in accordance with title 33, United States Code, section 1342(b). The discharger must be in full compliance with all requirements of the permit, waiver, or order and other

applicable laws and regulations, and written approval must be granted to the NPDES permittee by the director for any discharge to the storm-drainage system. In addition, the following provisions apply:

a. Where discharges are already occurring into the storm-drainage system, the discharger must obtain the director's written authorization within 30 days after this chapter's effective date to continue discharging to the storm-drainage system.

b. Upon the director's request, the discharger must provide proof of compliance with the NPDES permit within 15 days after the request date in a form specified by the director.

c. The director may rescind the authorization if the NPDES permittee fails to provide proof of compliance within the 30-day or 15-day deadlines specified in paragraphs a and b. Any non-stormwater discharge by the permittee that occurs after an authorization is rescinded is an illicit discharge.

14.81.020 Discharge response. A. Notwithstanding any other requirements of law, as soon as any person who is responsible for a facility or operation or who is responsible for emergency response for a facility or operation has information of any known or suspected release of materials that are resulting or may result in illicit discharges into the storm-drainage system, the person must:

1. Immediately act to locate, cease, contain, and clean up the discharged material to the extent that is safe to do so to prevent the discharges from continuing to enter the storm-drainage system.

2. Not enter or affect the storm-drainage system unless authorized by the director.

B. If any release of materials results in illicit discharges into the storm-drainage system, the responsible party must immediately:

1. Notify the department of public works' highways division of non-hazardous spills; notification can be by phone call, email, or completion of a physical or online reporting form that the County may make available; or

2. Call 911 for hazardous spills to report the location and material being discharged.

14.81.030 Best management practices. A. Any person responsible for premises that are or may be the source of an illicit discharge:

1. Must provide, at their own expense, reasonable protection from accidental discharge into the storm-drainage system; and

2. May be required by the County to implement additional structural and non-structural BMPs to prevent discharge of pollutants to the storm-drainage system.

B. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the maximum extent practicable, satisfies this section's provisions. BMPs must be described in a stormwater pollution prevention plan as necessary for compliance with requirements of the NPDES permit, including activities to be implemented by a responsible party to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, the storm-drainage system, or receiving waters to the maximum extent practicable.

14.81.040 Right of access. A. This section applies to facilities that may discharge stormwater to the storm-drainage system subject to regulation under this chapter.

B. The County must be permitted to enter and inspect any premises subject to regulation under this chapter as often as may be necessary to determine compliance with this chapter or whenever an illicit discharge is identified or suspected.

C. The County may seek a search warrant from any court of competent jurisdiction, if:

1. The County has been refused access to any part of the premises from which stormwater is discharged; and

2. The County can demonstrate:

a. Probable cause to believe that there may be a violation of this chapter; or

b. That there is a need to inspect or sample as part of a routine inspection and sampling program designed to:

i. Verify compliance with this chapter or any order issued under this chapter; or

ii. Protect public health, safety, or welfare.

Chapter 14.82

VIOLATIONS, ENFORCEMENT, AND PENALTIES

Sections:

14.82.010 Violations and penalties.

- 14.82.020 Abatement or restoration.
- 14.82.030 False representations.
- 14.82.040 Appeals.

14.82.010 Violations and penalties. A. Violations of this chapter are subject to section 19.530.030's civil penalties and enforcement procedures. Any person who negligently, recklessly, knowingly, or intentionally violates this chapter in a manner that causes the County to be fined by any regulatory agency is subject to a civil fine that trebles the amount of any fine paid by the County.

B. Any remedies or penalties established by this chapter are cumulative and in addition to any other remedy or penalty imposed by any other provision of law. The County may, at its discretion, seek cumulative remedies or penalties available under any other provision of law.

C. Each calendar day a person violates any provision or fails to comply with any of this chapter's requirements is a separate and distinct violation of this chapter.

D. Any person who is found guilty of negligently, recklessly, knowingly, or intentionally violating this chapter in a manner that causes the County to be fined by any regulatory agency may be fined up to \$2,000, sentenced to jail for no less than 60 days and no more than 180 days, or both.

E. Revenue from fines collected under this chapter must be deposited into the County's highway fund to be used and administered by the County for expenditures for storm-drainage system improvements and program administration.

F. Penalties imposed under this section must be separate from, and in addition to, any cost of abatement of the violation borne by the County or its contractors, for which the County may seek reimbursement from the responsible party.

14.82.020 Abatement or restoration. A. If abatement of a violation or restoration of affected property, including the storm-drainage system or receiving waters, is required, the notice of violation issued under section 19.530.030, must:

1. Set a deadline within which the responsible party must complete the abatement or restoration.
2. State that any costs associated with abatement or restoration will be at the responsible party's expense.
3. State that, if the violator fails to complete the abatement or restoration within the established deadline, the work will be done by a designated governmental agency or a contractor, and the expense will be charged to the responsible party.

B. After completion of any abatement by the County, the director must deliver to the affected property owner by mail or personal delivery a post-abatement notice stating:

1. The actions taken by the County.
2. The reasons for the actions.
3. The costs of abatement, including administrative costs, and that the responsible party must pay the costs to the County within 60 days.
4. That a lien will be recorded against any property owned by the responsible party if the responsible party fails to pay the abatement costs by the deadline.

C. In response to a notice issued under subsection A or B, the responsible party may file a written appeal under section 14.82.040 within 28 days from the date the director mailed or delivered the notice.

14.82.030 False representations. No person may:

A. Knowingly make any false statement, representation, or certification in any record, report, plan, or other document filed or required to be maintained under this chapter.

B. Falsify, tamper with, or knowingly render inaccurate any monitoring device or method required under this chapter.

14.82.040 Appeals. Any person aggrieved by a decision or order of the director may file an appeal with the board of variances and appeals under chapter 19.520 and the rules of practice and procedure adopted by the board of variances and appeals.”

SECTION 2. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Department of the Corporation Counsel
County of Maui

wai:misc:035abill01:dmr

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

ALICE L. LEE

Upon the request of the Mayor.

WAI Committee

From: Melody A. Andrion <Melody.Andrion@co.maui.hi.us>
Sent: Wednesday, November 27, 2024 9:20 AM
To: WAI Committee
Cc: Jarret P. Pascual; Carla M. Nakata; michael.hopper@co.maui.hi.us
Subject: WAI-35 Bill 157, CD1 (2024) Amend Title 14, MCC Establish Article 5 Stormwater Discharge
Attachments: WAI-35 2024-11-27 RAFL Closing Bill 157 CD1 (2024) Stormwater Discharge.pdf

See attached closing of RFLS received on 11/19/2024 e-signed by Michael Hopper (A Bill For An Ordinance Amending Title 14, Maui County Code, To Establish Regulations on Stormwater Discharge and Pollution Controls). Thanks!

For posting on the December 6, 2024 Council meeting agenda.

NOTICE: The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of, the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.