

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

## COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

### H.B 0428, Relating to Environmental Response

Testimony of Chiyome Leinaala Fukino, M.D.  
Director of Health

February 3, 2009

1 **Department's Position:** The Department opposes this measure as worded.

2 **Fiscal Implications:** None.

3 **Purpose:** This bill apparently seeks to provide state consistency with federal law on the liability of  
4 bona fide prospective purchasers and contiguous property owners for contaminated land.

5 **Justification:** The Department of Health supports the intent of this bill but respectfully opposes this bill  
6 for reasons of technical language and scope. Both this measure and the Administration bill, HB 1117  
7 resulted from extensive stakeholder involvement conducted by the Department over a two year period  
8 that identified inconsistencies between state and federal brownfields liability protections as a significant  
9 obstacle to safe and successful redevelopment of contaminated properties in Hawaii. While at first  
10 glance, both measures may appear quite similar, the Department has the following major concerns:

11 1. HB 428 is incomplete in its attempt to establish consistency with the federal Brownfields  
12 amendments that it is intended to mirror, and is missing key definitions and purpose statements needed  
13 to facilitate public compliance. For example, it lacks a specific reference to federal law for bona fide  
14 prospective purchasers.

1666

1           2. There are organizational issues. Establishing the bona fide prospective purchaser defense is  
2 the keystone of the 2002 federal brownfield amendments, and the single most requested change from  
3 stakeholders. HB 428 does not define this important term, or refer to it except in changes to the  
4 Voluntary Response Program. This is confusing because VRP liability relief and bona fide prospective  
5 purchaser protections are separate and distinct from each other. Similarly, protections for contiguous  
6 property owners are inserted separately from existing 128D-6 liability language, creating redundancy  
7 and confusion about application of liability to these classes of owners.

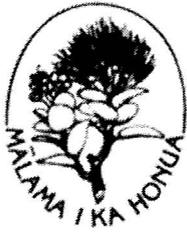
8           3. HB 428 unnecessarily amends HRS 128D, Part II, altering and expanding the Voluntary  
9 Response Program, a Hawaii-specific liability protection program that does not have a federal corollary.  
10 These changes were not raised, discussed, or requested at any of the four major stakeholder meetings  
11 held in the past in two years.

12           We strongly support passage of HB 1117. This alternate bill is a direct result of extensive  
13 stakeholder involvement led by the Department, closely matches the needs identified, discussed and  
14 endorsed by the community, while carefully maintaining environmental protections.

15           Alternately, we respectfully request that HB 428 be replaced in its entirety by the contents of HB  
16 1117. With either bill, the Department recommends an amendment suggested by stakeholders reviewing  
17 HB 1117 to ensure that the final bill closely mirrors the all appropriate inquiries requirements from the  
18 federal statute. The Department opposes any changes to the Voluntary Response Program at this time,  
19 but is prepared to facilitate stakeholder discussion over the course of the next year to evaluate the need  
20 and advisability of making statutory changes.

21           It is for the above stated reasons that the DOH respectfully opposes this bill as written.

22           Thank you for the opportunity to testify on this measure.



# Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803  
808.537.9019 hawaii.chapter@sierraclub.org

## HOUSE COMMITTEE ON ENERGY & ENVIRONMENTAL PROTECTION

February 3, 2009, 10:00 A.M.

(Testimony is 2 page long)

### TESTIMONY IN OPPOSITION TO HB 428

Chair Morita and members of the Committees:

The Sierra Club, Hawai'i Chapter, with 5500 dues paying members statewide, opposes HB 428, which purportedly brings Haw. Rev. Stat. Ch. 128D in compliance with federal law. While the Sierra Club supports the concept of maximizing the clean-up and usage of brownfield sites, there are too many questions regarding the language of this bill to allow it to proceed.

HB 428 purportedly brings our environmental response laws into compliance with federal law. There is at least one example, however, where it appears to endeavor to do more, e.g., it attempts to broaden the sweep of immunity. For this reason, *the Sierra Club recommends either holding HB 428 until it can be vetted better or utilizing the language contained in HB 1117*, which was subject to public participation and comment from the Department of Health.

Specifically, on page 18, lines 9 - 11, HB 428 includes a contiguous property owner in the Voluntary Response Program. The Voluntary Response Program has no counterpart in federal law. It is unclear why it needs to be revised.

Moreover, a liability exemption for a contiguous property owner is inapplicable to the Voluntary Response Program. A complete cleanup, which is the intent of the Voluntary Response Program, is impossible without the originating property's participation. Under the proposed language, owners of the contiguous property would not be liable for future hazardous waste that leached from the original contaminated property. In these times of fiscal restraint, why would the legislature want to take away the right of the Administration to pursue—via lawsuit if necessary—clean up actions for hazardous waste sites?

There are additional concerns about some of the omissions contained in this bill, such as the omission of a definition of a "bona fide prospective purchaser." Such language issues can create more problems than this bill is intended to solve.

Thank you for the opportunity to testify.