
A BILL FOR AN ACT

RELATING TO MUNICIPAL SOLID WASTE LANDFILL PERMITS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Act 73, Session Laws of Hawaii 2020, deleted
2 the phrase, "any federal agency," from the entities included in
3 the term "person" under section 342H-52, Hawaii Revised
4 Statutes, in defining "person." The legislative intent, as
5 described in Standing Committee Report No. 1273-20, was for
6 "[m]aking inapplicable to federal agencies the prohibition on
7 construction, operation, modification, expansion, or closure of
8 a municipal solid waste landfill unit without first obtaining a
9 permit from the Director of Health". However, section 342H-1,
10 Hawaii Revised Statutes, defines "person" to mean "any
11 individual, partnership, firm, association, public or private
12 corporation, federal agency, the State or any of its political
13 subdivisions, trust, estate, or any other legal entity". Thus,
14 at a minimum, there is a conflict between the plain language of
15 the law and the intent.

16 More importantly, as confirmed by the United States
17 Environmental Protection Agency in a letter signed April 19,



1 2021, "the removal of the [Hawaii Department of Health's]
2 authority to issue permits to federal agency municipal solid
3 waste landfills appears to place the State in non-compliance
4 with the Resource Conservation and Recovery Act, section 4005(c)
5 codified in 42 United States Code, section 6945, Code of Federal
6 Regulations section 239.6(e), which require that states adopt
7 and implement permit programs that assure each solid waste
8 management facility within their state obtains a permit and
9 complies with the applicable criteria".

10 As stated in title 40 Code of Federal Regulations section
11 239.13, "Criteria and procedures for withdrawal of determination
12 of adequacy", states, "(a) The Regional Administrator [of the
13 U.S. Environmental Protection Agency] may initiate withdrawal of
14 a determination of adequacy when the Regional Administrator has
15 reason to believe that: (1) A state no longer has an adequate
16 permit program; or (2) The state no longer has adequate
17 authority to administer and enforce an approved program in
18 accordance with this part."

19 The removal of the Department of Health's authority to
20 permit federal municipal solid waste landfills not only removes
21 regulatory oversight of the design, construction, and operation



1 of federal municipal solid waste landfills, but creates the loss
2 of an approved municipal solid waste landfill permit program in
3 accordance with federal regulations. The loss of a federal
4 approved program will deny other municipal solid waste landfills
5 in the State, which are currently all owned by the counties, the
6 ability to design, operate, close, and monitor their landfills
7 using alternative designs or methods to the federal standards
8 that could be more suitable for local site conditions and more
9 cost-effective. For example, federal prescribed liner systems
10 require a minimum of two feet of soil with a maximum hydraulic
11 conductivity of 0.0000001 cm/s. However, soil with this type of
12 permeability on the island of Hawaii is nearly impossible to
13 find on-island. A geosynthetic alternative to this soil could
14 be utilized to meet this design standard, but this option would
15 not be permissible without a state-approved permit program.

16 The purpose of this Act is to reinstate the department of
17 health's authority to permit federal municipal solid waste
18 landfills by restoring "any federal agency" to the entities
19 included in the term "person" in section 342H-52(a), Hawaii
20 Revised Statutes.



1 SECTION 2. Section 342H-52, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) No person, including any federal agency, the State, or
4 any county, shall construct, operate, modify, expand, or close a
5 municipal solid waste landfill unit, or any component of a
6 municipal solid waste landfill unit, without first obtaining a
7 permit from the director. All permits for municipal solid waste
8 landfill units shall be subject to any terms and conditions that
9 the director determines are necessary to protect human health or
10 the environment."

11 SECTION 3. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.



H.B. NO. 2147 H.D. 1

Report Title:

Federal Municipal Solid Waste Landfills; Department of Health;
Permits

Description:

Reinstates the Department of Health's authority to permit
federal municipal solid waste landfills. (HD1)

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