

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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**Testimony in OPPOSITION to SCR 77  
URGING THE DEPARTMENT OF HEALTH TO ENSURE THE SAFE  
MANAGEMENT OF ASH FROM WASTE INCINERATION FACILITIES**

SENATOR MIKE GABBARD, CHAIR  
SENATE COMMITTEE ON AGRICULTURE AND ENVIRONMENT

SENATOR JOY A. SAN BUENAVENTURA, CHAIR  
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Hearing Date: March 25, 2024

Room Number: 224

1 **Fiscal Implications:** N/A

2 **Department Testimony:** This resolution (1) requests the Department of Health (Department) to  
3 enforce section 342H-30, Hawaii Revised Statutes (HRS) to only allow incinerator ash to be  
4 landfilled and trucked using secured tarps; and (2) notifies the City and County of Honolulu that  
5 incinerator ash recycling violates state laws.

6 The Department offers the following clarification on the current management of the  
7 Honolulu Program Of Waste Energy Recovery (H-POWER) incinerator ash at Waimanalo Gulch  
8 Sanitary Landfill, and the Department's process for issuing solid waste management permits.

9 The Waimanalo Gulch Sanitary Landfill is permitted to accept combined H-POWER ash.  
10 Fresh combined ash has a mean moisture content between 19% to 25%. Given the dampness of  
11 fresh combined ash and the 24-hour delivery schedule of ash, fresh ash is permitted to be used as  
12 alternative daily cover in the ash disposal area, provided that soil daily cover is placed on areas  
13 where fresh ash will not be placed within the following 24 hours. Thus, majority of the ash cells  
14 are required to be covered with soil. Requirements to secure the ash under tarps when trucking  
15 are currently regulated by the Department of Transportation Highways under section 291C-131,  
16 HRS<sup>1</sup>.

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<sup>1</sup> [https://www.capitol.hawaii.gov/hrscurrent/Vol05\\_Ch0261-0319/HRS0291C/HRS\\_0291C-0131.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0291C/HRS_0291C-0131.htm)

1 Section 342H-30, HRS prohibits open dumping and prohibits the operation of a solid  
2 waste management facility without the written approval of the Director of Health, which is  
3 typically accomplished through the issuance of a solid waste management permit. As part of the  
4 permitting process, the Department considers the design and operation of the facility, the  
5 proposed recycled product, if any, and the potential impact of both on public health and the  
6 environment. If a permit is issued, appropriate permit conditions will be included, in accordance  
7 with section 342H-04, HRS.

8 The Department is not aware of any statute, including section 342H-30, HRS, that  
9 prohibits the recycling of incinerator ash, provided that a solid waste management permit is  
10 issued by the Department. Section 342G-2(b), HRS states, “In implementing this chapter, the  
11 department and each county shall consider the following solid waste management practices and  
12 processing methods in their order of priority:

- 13 (1) Source reduction;
- 14 (2) Recycling and bioconversion, including composting; and
- 15 (3) Landfilling and incineration.”

16 With this understanding, it appears appropriate for the City and County of Honolulu to consider  
17 recycling options over landfilling, and if pursued, to demonstrate to the Department through our  
18 solid waste permitting process that regulatory compliance can be achieved and that the proposed  
19 actions are protective of public health. Based on the identified conflicts, the Department opposes  
20 this resolution.

21 **Offered Amendments:** None.

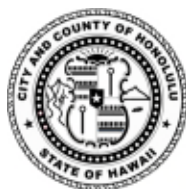
22 Thank you for the opportunity to testify.

**DEPARTMENT OF ENVIRONMENTAL SERVICES**  
**KA 'OIHANA LAWELAWE KAIĀPUNI**  
**CITY AND COUNTY OF HONOLULU**

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**LATE**

RICK BLANGIARDI  
MAYOR  
MEIA



ROGER BABCOCK, JR., Ph.D., P.E.  
DIRECTOR  
PO'O

MICHAEL O'KEEFE  
DEPUTY DIRECTOR  
HOPE PO'O

IN REPLY REFER TO:  
WAS 24-40

March 25, 2024

The Honorable Mike Gabbard, Chair  
The Honorable Herbert M. "Tim" Richards, III, Vice Chair  
and Members of the Committee on Agriculture and Environment  
The Honorable Joy A San Buenaventura, Chair  
The Honorable Henry J.C. Aquino, Vice Chair  
and Members of the Committee on Health and Human Services  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Gabbard and Richards, III, and Vice Chairs San Buenaventura and Aquino:

**SUBJECT: SCR 77/ SR 64, URGING THE DEPARTMENT OF HEALTH  
TO ENSURE THE SAFE MANAGEMENT OF ASH FROM WASTE  
INCINERATION FACILITIES**

The City and County of Honolulu's (City) Department of Environmental Services (ENV) submits the following testimony in opposition to SCR 77/ SR 64.

The overarching goal of the City's solid waste management program is to divert waste from landfill disposal. Waste diversion is achieved primarily through H-POWER, the City's waste-to-energy facility, but also through recycling/composting and source reduction.

H-POWER processes approximately 800,000 tons of trash per year, reducing the volume of that trash by 90% through incineration, while producing up to 70 megawatts of firm renewable energy. H-POWER produces about 150,000 tons ash per year. In 2022, this amounted to about 65% of all the material that was sent to the Waimanalo Gulch Landfill, or about 7,500 truckloads of material being delivered to Waimanalo Gulch.

To further reduce the amount of material going to Waimanalo Gulch, in FY2022 ENV issued a Notice To Proceed for its H-POWER ash recycling project and has been actively working with its vendor and state regulators to obtain a permit (based in state law) for the project. ENV's ash recycling project has the potential to divert up to 60% of H-POWER ash, or 90,000 tons toward beneficial reuse, such as aggregate for the construction industry. In order for the project to be permitted by the state Department of

The Honorable Mike Gabbard, Chair  
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and Members of the Committee on Health and Human Services  
415 South Beretania Street  
Honolulu, Hawai'i 96813

Health (DOH), it will have to demonstrate that it can successfully remove contaminants of concern to below certain levels so that when the aggregate is deployed it will have no negative impact on human health or the environment. If and when the project is permitted, ENV will be required to have the aggregate regularly tested to demonstrate it continues to be safe.

Please feel free to contact me at (808) 768-3486 with any questions.

Sincerely,

Roger Babcock, Jr., Ph.D., P.E.  
Director



# Environmental Caucus of The Democratic Party of Hawai'i

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March 24, 2024

To: Senate Committee on Agriculture and Environment  
Hon. Mike Gabbard, Chair  
Hon. Herbert M. "Tim" Richards, III, Vice Chair

Senate Committee on Health and Human Services  
Hon. Joy A. San Buenaventura, Chair  
Hon. Henry J.C. Aquino, Vice Chair

Re: SCR 77/SR 64 requesting DOH to ensure safe management of incinerator ash  
Hearing: Monday, March 25, 2024, 1:00 p.m., Room 224 & videoconference  
Position: Strong support

Aloha, Chairs Gabbard and San Buenaventura, Vice Chairs Richards and Aquino, and Members of the Committees:

The Environmental Caucus of the Democratic Party of Hawai'i comprises some 7,500 politically active members of Hawai'i's majority political party. We strongly support this proposed resolution, which urges the Department of Health to ensure the safe management of incinerator ash.

As the proposed Concurrent Resolution and Senate Resolution note, waste incineration facilities reduce every one hundred tons of trash to approximately thirty tons of ash. Currently, H-Power is the only trash incinerator in Hawaii, operating in Campbell Industrial Park on Oahu, burning up to 2,600 TONS of waste per DAY. The H-Power ash is currently being dumped in the Waimanalo Gulch Landfill in Honokai Hale.

The proposed Resolutions further point out that fly ash from trash incinerators is regulated as hazardous waste in several other nations, However, in the United States, the Environmental Protection Agency (EPA) categorically defines incinerator ash as "non-hazardous," even though tests show that fly ash is defined as hazardous over ninety percent of the time due to the leaching of lead and cadmium.

Despite EPA's position, the United States Supreme Court ruled in 1994 that incinerator ash must be handled as hazardous waste if it tests hazardous. EPA then responded by changing its test to allow the mixing of fly and bottom ash, and EPA adopted other methods that enable incinerator ash to pass the hazardousness test. The proposed resolution further notes that this form of testing is inadequate, because it does not test for skin exposure that incinerator workers endure.



Environmental Caucus of  
The Democratic Party of Hawai'i

Workers at trash-burning facilities typically handle incinerator ash with no respiratory protection. These workers regularly move ash to a landfill in trucks where some ash can blow or spill during transit. They dump ash from trucks where ash dust usually rises up in a cloud that wind can carry, and they use toxic ash as daily cover material, instead of using a tarp or clean soil to prevent wind from blowing ash into the community. This situation is manifestly inadequate.

The resolutions note that Hawai'i already has a law on the books that should address these issues. HRS §342H-30(c) states that:

No person, including any public body, shall discard, dispose of, deposit, discharge, or dump solid waste, or by contract or otherwise arrange directly or indirectly for the disposal of solid waste in an amount equal to or greater than one cubic yard in volume anywhere other than a permitted solid waste management system without the prior written approval of the director. Each day of violation shall constitute a separate offense. This prohibition shall not be deemed to supersede any other disposal prohibitions established under federal, state, or county law, regulation, rule, or ordinance.

It is long past time for DOH to enforce this law with respect to incinerator ash. That is what these resolutions propose to do. We need to move forward as soon as possible to impose serious controls on the management of incinerator ash.

Accordingly, we believe it is critical for the Legislature to pass these two proposed resolutions.

On behalf of the Environmental Caucus, we thank you very much in advance for your support of these requests. Thank you for the opportunity to testify on these important resolutions.

*Melodie Adyja* [legislativepriorities@gmail.com](mailto:legislativepriorities@gmail.com)

*Alan B. Burdick* [burdick808@gmail.com](mailto:burdick808@gmail.com)

Co-Chairs, Environmental Caucus

Comments before March 25, 2024  
Senate Committee on Agriculture and Environment  
& Senate Committee on Health and Human Services

**IN SUPPORT OF**  
**Senate Concurrent Resolution 77**  
**& Senate Resolution 66**

Relating to Safe Disposal of Incinerator Ash

Mike Ewall, Esq.  
Founder & Director  
Energy Justice Network  
215-436-9511  
mike@energyjustice.net  
[www.EnergyJustice.net](http://www.EnergyJustice.net)

Aloha Honorable Committee members. Energy Justice Network is a national organization supporting grassroots groups working to transition their communities from polluting and harmful energy and waste management practices to clean energy and zero waste solutions. In Hawai'i, we've been working with residents who first sought our support in 2015. Since mid-2022, we have supported residents in forming the Hawai'i Clean Power Task Force and Kokua na Aina to address numerous energy and waste issues in the state.

We stand in strong support of SCR 77 and SR 66.

Without repeating the important points in the resolution, we'd emphasize that incinerator ash is toxic and dangerous, and so long as it continues to be produced, it should be sequestered from human and environmental contact as much as possible, not used to make roads (which would become linear, unlined landfills) or for other purposes that make it more available to harm people and other animals, and our shared environment.

The fact that EPA's revised test causes ash to test legally "non-hazardous" does not mean that ash is safe, "non-toxic" or biologically "inert." Using such terms is an abuse of language and a distortion of the actual meaning of EPA's legal definition of "hazardous."

There are a number of edits made in the legislative drafting process that unintentionally made parts of this resolution incorrect, and a spelling correction that was in the original draft that also needs correcting. We offer the following edits to restore the proper wording:

- 1) "H-POWER" is an acronym for Honolulu Program Of Waste Energy Recovery. All letters in the name ought to be capitalized in paragraphs two and three of the resolutions.
- 2) Paragraph four talks about EPA's old test for incinerator ash, not the current test method, and the current language in the resolution is incorrect. It should read as follows **[changes in bold]**:

WHEREAS, fly ash from trash incinerators is regulated as hazardous waste in several other nations, but in the United States, the Environmental Protection Agency (EPA) **used to categorically define** incinerator ash as non-hazardous, even **though** tests would show that fly ash qualified as hazardous over ninety percent of the time due to the leaching of lead **or** cadmium, and bottom ash would test hazardous thirty-six percent of the time due to leaching of toxic lead; and

- 3) The parenthetical in paragraph six was also edited in a way that made it incorrect. It reads, "(which require testing incinerator ash only for what leaches out of the incinerator at a certain pH in short-term lab tests)." The original stated that the test is for what leaches out of the ash, not that ash is leaching from the incinerator. It should read:

“(which require testing only for what leaches out of incinerator ash at a certain pH in short-term lab tests)”

- 4) Paragraph nine states that the “City and County of Honolulu are currently working...” The City and County of Honolulu is one legal entity and the word “are” should be restored to the original, singular “is.”
- 5) Paragraph 10 describes how cement made from ash is not forever and is eventually broken up. It should read “eventually broken up,” not “eventually break up,” since the point is that cement is ultimately jackhammered and broken up intentionally, not that it breaks up and erodes naturally over time. Also, “participles” was a spelling mistake in the original, and should say “particles.” Additional language about cautionary warnings should also be restored. The paragraph should read **[changes in bold]**:

WHEREAS, roads and other construction materials are not forever, and will erode and eventually **be broken** up, releasing more ash particles, without cautionary warnings **about toxicity, and without special handling appropriate for material containing fine particles** of highly toxic dioxins and furans, and toxic metals like arsenic, cadmium, chromium, lead, and mercury; now, therefore,

- 6) In the first “be it resolved” paragraph, for the sake of better grammar, “properly contained” should be restored to say “proper containment.”

Mahalo nui loa for your support for this important matter!



March 25, 2024

Senator Joy A. San Buenaventura, Chair  
Committee on Health and Human Services

Senator Mike Gabbard, Chair  
Committee on Agriculture and Environment

**Re: SCR 77 / SR 64 - URGING THE DEPARTMENT OF HEALTH TO ENSURE THE SAFE  
MANAGEMENT OF ASH FROM WASTE INCINERATION FACILITIES.**

Dear Chair San Buenaventura, Chair Gabbard and Members of the Joint Committees:

Covanta respectfully submits this testimony in opposition to SCR 77 / SR 64, which directs the Department of Health to ensure the safe management of ash from waste incineration facilities. Covanta is the operator of the City and County of Honolulu's H-POWER facility.

Nearly all downstream waste processing (e.g. recycling, energy recovery) generates some amount of waste – meaning there is a residue of material that cannot be further processed. Waste-to-energy facilities such as H-POWER generate an ash residue composed of noncombustible material and, to a lesser extent, materials added for air pollution control, such as activated carbon and lime. Most of the ash generated is termed “bottom ash” and refers to the heavier fractions of combusted materials. The remaining ash generated is called “fly ash” and is captured from the remaining parts of the process. In the U.S., these two streams are generally managed together as “combined ash.”

The combined ash is tested as required by our permits to confirm that it is non-hazardous per U.S. EPA regulations. No ash from Covanta's U.S. WTE facilities has ever been determined to be a hazardous waste. To comply with U.S. EPA regulations, ash is regularly tested for toxicity through the toxicity characteristic leaching procedure (TCLP). The TCLP test is intended to simulate a worst case condition for any solid waste in a landfill for many years. In practice, ash has been demonstrated to be more stable and resistant to leaching than regular municipal solid waste.

As noted in the resolution, Waimanalo Gulch landfill is the site where H-POWER ash is currently disposed. As the City and County of Honolulu plans for its future disposal needs, it is pursuing a project with Covanta which would enable much of the bottom ash from HPOWER to be beneficially reused. This would reduce the amount of ash disposal

at Waimanalo Gulch by up to 60%, thus extending the landfill's capacity. The Waimanalo Gulch landfill is currently slated to close in 2028. If a new landfill is ultimately built, the ash disposal reduction would also apply there.

Being an island community, the potential sites for additional or new landfill capacity are extremely limited. Therefore, an opportunity to reuse HPOWER ash is a responsible, sustainable direction for the City and County of Honolulu to pursue. In addition to saving dwindling landfill space, the project could replace some of the aggregate that must currently be imported from the mainland. This would help reduce costs for road construction and other infrastructure projects in the County.

The Covanta ash processing permit application will be subject to the Department of Health (DOH) review and approval as well as a public comment. We respectfully suggest that DOH is the appropriate entity to determine whether this, or any such project, fully addresses public health concerns. Therefore, Covanta therefore requests that the committee defer SCR 77/ SR 64.

Thank you for the opportunity to provide our testimony.

Frazier Blaylock  
Senior Director  
Government Relations

**SCR-77**

Submitted on: 3/22/2024 10:54:50 AM

Testimony for HHS on 3/25/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jacqueline S. Ambrose	Individual	Support	Written Testimony Only

Comments:

Aloha,

Yes to; URGING THE DEPARTMENT OF HEALTH TO ENSURE THE  
SAFE MANAGEMENT OF ASH FROM WASTE INCINERATION  
FACILITIES

**LATE**

**SCR-77**

Submitted on: 3/24/2024 7:16:42 PM

Testimony for HHS on 3/25/2024 1:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sherry Pollack	Individual	Support	Written Testimony Only

Comments:

I am writing in strong support of SCR77 and SR64 relating to safe disposal of incinerator ash and urging the Department of Health to ensure the safe management of ash from waste incineration facilities.

I was very alarmed to learn that the City and County of Honolulu are currently working with Covanta to develop an ash "recycling" facility at Campbell Industrial Park where incinerator ash would be exempted from being handled as waste and would be used to build roads or for other purposes that can put workers, the public, and the environment in more contact with incinerator ash than would occur if it were properly contained and landfilled responsibly.

Ash from incineration is contaminated with extremely high levels of heavy metals and dioxins. These pollutants don't disappear simply because they are incorporated into material for roads. Future releases of persistent toxic substances due to erosion over time can result in the release of toxic substances back to the environment and, therefore, potentially to human exposure. Clearly, the use of ashes from incinerators represents a potential threat to human health, and as such, should not be allowed in our state.

We must ensure the Department of Health enforces section 342H-30, Hawaii Revised Statutes, so that incinerator ash (a type of "solid waste") may not be managed in a manner other than properly contained in a landfill, and that trucking and landfilling must at least use secure tarps to ensure that ash cannot be blown by wind into the community.

Please pass SCR77 and SR64 towards these important safety measures.