



Environmental Caucus of The Democratic Party of Hawai'i

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.



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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.

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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

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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!

SR-64

Submitted on: 3/21/2024 6:14:20 PM

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

Submitted By	Organization	Testifier Position	Testify
B.A. McClintock	Individual	Support	Written Testimony Only

Comments:

Please support this important bill. Mahalo.

LATE

SR-64

Submitted on: 3/24/2024 7:17:41 PM

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

Submitted By	Organization	Testifier Position	Testify
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.