

## ACT 340

H.B. NO. 3454

A Bill for an Act Relating to Hazardous Waste.

*Be It Enacted by the Legislature of the State of Hawaii:*

**SECTION 1.** The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the regulation of such facilities are environmental issues that should properly be addressed and controlled by the State rather than the federal government. It is the purpose of this part, and it is the policy of this State, to protect the public health and safety, the health of living organisms, and the environment from the improper, inadequate, or unsound management of hazardous wastes; to establish a preventive and regulatory program for the generation, transportation, treatment, storage, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this State; and to authorize the State to adopt, administer, and enforce a hazardous waste program pursuant to the Federal Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. § 6901), as amended.

**SECTION 2.** Chapter 342, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**“PART . HAZARDOUS WASTE MANAGEMENT**

**§342- Legislative policy; program priorities.** The legislature finds that hazardous waste must be managed in a manner that protects the health, safety, and welfare of the citizens of the State and protects and conserves the State’s natural resources and environment. Accordingly, the hazardous waste management program of this State shall be a preventive as well as a regulatory program that gives priority to:

- (1) The provision of technical assistance to generators to ensure the safe and proper handling of hazardous waste;
- (2) The establishment of a public education program to promote awareness of what constitutes hazardous waste and the dangers of improper disposal of such waste;
- (3) The promotion of waste reduction, recycling, exchange, and treatment as the preferred methods of managing hazardous waste, with disposal to be used only as a last resort when all other waste management methods are ineffective or unavailable; and
- (4) The coordination of hazardous waste management efforts among the counties of this State, taking into consideration the unique differences and needs of each county.

**§342- Definitions.** As used in this part, unless the context otherwise requires:

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that hazardous waste or any constituent thereof may enter the environment, be emitted into the air, or discharged into any waters, including groundwaters.

“Financial responsibility” means a trust fund, surety bond, or letter of credit provided by owners or operators of hazardous waste treatment, storage, and disposal

facilities to assure proper closure, post closure, and compensation for injuries to people or damage to property.

“Generator” means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under this part.

“Hazardous waste” means a solid waste, or combination of solid waste, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in a serious irreversible or incapacitating reversible illness; or
- (2) Pose a substantial existing or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed;

or any waste identified as hazardous pursuant to this part.

“Hazardous waste management” means the systematic control over the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

“Hazardous waste management facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combinations of them).

“Manifest” means the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

“Solid waste” means solid waste as defined in section 342-51.

“Storage” means the containment of hazardous waste, temporarily or for a period of years, in a manner which does not constitute disposal.

“Transporter” means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, water, or pipeline.

“Treatment” means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or render it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. This term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

**§342- Powers and duties.** In addition to any other power or duty prescribed by law in this part or otherwise, the director shall prevent, control, and abate hazardous waste pollution in this State. In the discharge of this duty the director may:

- (1) Administer and enforce this part, rules implementing this part, and orders and permits issued pursuant to this part;
- (2) Establish by rule a list of hazardous wastes and a set of characteristics for identifying hazardous wastes;
- (3) Establish by rule standards applicable to generators of hazardous waste identified under this part, including requirements regarding:
  - (A) Obtaining an identification number;
  - (B) Requiring a solid waste generator to determine whether the waste that that person has generated is hazardous waste;
  - (C) Using appropriate containers for hazardous waste;

- (D) Packaging, labeling, marking, and placarding practices;
- (E) Transporting and international shipping of hazardous waste;
- (F) Developing a manifest system to track movements of hazardous wastes to designated facilities; and
- (G) Submitting reports and recordkeeping practices;
- (4) Establish by rule standards applicable to transporters of hazardous waste identified or listed under this part including, but not limited to, requirements regarding:
  - (A) Obtaining an identification number;
  - (B) Labeling practices;
  - (C) Transporting hazardous waste;
  - (D) Requiring action, including cleanup, if hazardous waste is discharged in transit;
  - (E) Using the manifest properly; and
  - (F) Submitting reports and record-keeping practices;
- (5) Establish by rules standards applicable to owners and operators of facilities for treatment, storage, or disposal of hazardous waste, identified or listed under this part, including but not limited to, requirements regarding:
  - (A) Obtaining an identification number;
  - (B) Inspecting, monitoring, submitting reports, and record-keeping practices;
  - (C) Using the manifest properly;
  - (D) Designing, constructing, and locating of hazardous waste management facilities;
  - (E) Developing contingency plans to minimize unanticipated damage from treatment, storage, or disposal of hazardous waste;
  - (F) Maintaining and operating hazardous waste management facilities;
  - (G) Determining qualifications as to ownership, continuity of operation, training for personnel, closure and post-closure requirements, and financial responsibility (including financial responsibility for corrective action); and
  - (H) Issuing permits for hazardous waste management facilities;
- (6) Prohibit land disposal of specified hazardous wastes;
- (7) Appoint a master or masters to conduct investigations and hearings;
- (8) Receive or initiate complaints, hold hearings, and institute legal proceedings in the name of the State for prevention, control, or abatement of hazardous waste pollution;
- (9) Institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of this part or any rule adopted thereunder, including permit conditions, without the necessity of a prior revocation of the permit;
- (10) Initiate, conduct, and support research, demonstration projects, and investigation, as the department's resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;
- (11) Provide technical assistance to hazardous waste generators;
- (12) Promote public awareness of hazardous waste management concerns by conducting educational training programs for the general public as well as for the generators;
- (13) Promote industrial practices that reduce, avoid, or eliminate generation of hazardous waste;

- (14) Cooperate with and receive money, with the approval of the governor, from the federal government, any political subdivision of the State, or from private sources for the study and control of hazardous waste;
- (15) Inventory sites and locations in the State where hazardous wastes have been stored or disposed of at any time; and
- (16) Adopt other rules which are necessary to obtain and maintain authorization under the federal program.

**§342- Prohibition.** No person, including any federal agency, the State, or any of its political subdivisions, shall own, operate, or construct a hazardous waste management facility without first securing a permit issued by the director.

**§342- Hazardous waste releases.** (a) The director may issue an order requiring the owner or operator of a facility or site to monitor, test, analyze, and report, with respect to a site, in order to ascertain the nature and extent of any hazardous waste release.

(b) Any person to whom the order is issued may be required to submit to the director within thirty days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(c) If the director determines that the owner or operator is not able to conduct monitoring, testing, and analysis in a satisfactory manner, the director may conduct such activities.

(d) The director may issue a cleanup order to any person who has released any hazardous waste into or on any land or water in an unlawful manner or who has released any material or substance into or on any land or water so as to result in unlawful hazardous waste disposal.

**§342- Entry and inspection of premises.** The director, in accordance with law, may enter and inspect any building or place for the purposes of:

- (1) Investigating an actual or suspected source of hazardous waste pollution;
- (2) Monitoring for compliance or noncompliance with this part, any rule or standard adopted by the department, any permit, or any other approval granted by the department;
- (3) Conducting reasonable tests;
- (4) Taking samples; or
- (5) Copying records.

No confidential information secured pursuant to this section by any official or employee of the department within the scope and course of the official's or employee's employment in the prevention, control, or abatement of hazardous waste pollution shall be disclosed by the official or employee except as it relates directly to hazardous waste pollution and then, only in connection with the official's or employee's official duties and within the scope and course of the official's or employee's employment.

**§342- Intervention.** Subject to the approval of the court, any individual shall have the right to intervene in any civil action to enforce the provisions of this part provided the individual has an interest which is, or may be, adversely affected.

**§342- Technical assistance to generators.** (a) The department shall establish a technical assistance program for generators of hazardous waste in the State. The program shall be designed to assist generators in obtaining information concerning hazardous waste management:

- (1) To identify and apply methods of reducing the generation of hazardous wastes;
- (2) To facilitate improved management of hazardous waste and compliance with the department's requirements; and
- (3) For other similar purposes.

The program shall emphasize assistance to the smaller businesses and small quantity generators that have limited technical and financial resources for obtaining information, assessing hazardous waste management methods, and developing and applying hazardous waste reduction techniques. Information and techniques developed under this program shall be made available to all generators in the State.

(b) The assistance program shall include at least the following elements:

- (1) Outreach programs, including on-site consultation at locations where hazardous waste is generated, seminars, workshops, training programs, and other similar activities designed to assist generators in evaluating their hazardous waste generation and management practices, identifying opportunities for waste reduction and improved management, and identifying subjects that require additional information and research;
- (2) A program to assemble, catalog, and disseminate information about hazardous waste reduction and management methods, available commercial waste management facilities and consultant services, and regulatory programs;
- (3) Evaluation and interpretation of information needed by generators to improve their management of hazardous waste; and
- (4) Informational and technical research to identify alternative technical solutions that can be applied by specific generators to reduce the generation of hazardous waste.

(c) The program shall be coordinated with other public and private programs that provide management and technical assistance to smaller businesses and small quantity generators, including any program operated by a public or private educational institution.

**§342- Public education program.** The department shall develop and implement a public education program, the objectives of which shall be to:

- (1) Develop increased public awareness of and interest in environmentally sound hazardous waste management methods;
- (2) Encourage better informed decisions on hazardous waste management issues by businesses, industries, local governments, and the public; and
- (3) Disseminate practical information concerning methods in which households, other institutions, and organizations can improve the management of hazardous waste."

SECTION 3. Section 342-1, Hawaii Revised Statutes, is amended by amending the following definitions to read:

" "Complaint" means any written charge filed with or by the department that a person is violating any provision of this chapter or any rule[, regulation,] or order [promulgated] adopted pursuant to this chapter.

"Permit" means written authorization from the director to discharge waste, [or] to construct, modify, or operate any air pollution source, water pollution source, excessive noise source, or solid waste disposal system[.], or engage in hazardous waste management. A permit authorizes the grantee to cause, emit, or discharge waste or pollution in a manner or amount, or to do any act, not forbidden by this

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chapter[,], or by rules [and regulations promulgated] adopted under this chapter, but requiring review by the department.

“Person” means any individual, partnership, firm, association, public or private corporation, federal agency, the State or any of its political subdivisions, trust, estate, or any other legal entity.

“Pollution” means air pollution, water pollution, excessive noise, [or] solid waste pollution [including], or hazardous waste pollution [as hereinafter defined].

“Variance” means special written authorization from the director to cause, emit, or discharge waste or pollution in a manner or in an amount in excess of applicable standards, or to do an act that deviates from the requirements of rules [or regulations promulgated] adopted under this chapter.”

SECTION 4. Section 342-3, Hawaii Revised Statutes, is amended to read as follows:

**“§342-3 [Powers, rulemaking,] Rules; appointment of hearings officers.**

(a) The director may make, amend, and repeal state rules [and regulations] controlling and prohibiting air pollution, water pollution, noise pollution, solid waste pollution, hazardous waste pollution, and any other form of pollution found in this State. All rules [and regulations] shall be adopted pursuant to chapter 91. Any person heard at the public hearing shall be given written notice of the action taken by the department with respect to the rules [or regulations].

(b) In addition to other specific powers provided in this chapter, the director may appoint, without regard to chapters 76 and 77, hearings officers to conduct public participation activities, including public hearings and public informational meetings.”

SECTION 5. Section 342-11, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Any person who knowingly:

- (1) [transports] Transports any hazardous waste to a storage, treatment, or disposal facility [and who] which does not have a permit under section [342-53(b)] 342- to treat, store, or dispose of that particular hazardous waste;
- (2) [treats,] Treats, stores, or disposes of hazardous waste without first having a permit under section [342-53(b);] 342-; or
- (3)<sup>1</sup> [makes] Makes a false statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used, for purposes of compliance with part of this chapter [342, part V], shall be subject to criminal penalties of not more than \$25,000 for each day of violation, or [to] imprisonment, not to exceed one year, or both. If the conviction[,], is for a violation committed after a first conviction, criminal punishment shall be by a fine of not more than \$50,000 for each day of violation, or by imprisonment for not more than two years, or both.”

SECTION 6. Section 342-51, Hawaii Revised Statutes, is amended to read as follows:

“**§342-51 Definitions.** As used in this part, unless the context otherwise requires:

“Approved solid waste disposal system” means a system for the storage, treatment, transfer, and disposal of solid waste approved by the director.

“Disposal” means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste [or hazardous waste] onto any land or water so that such solid waste, [or hazardous waste] or any constituent thereof, may enter the environment, [or] be emitted into the air, or discharged into any water, including ground waters.

["Financial responsibility" means a trust fund, surety bond, or letter of credit to assure proper closure, post closure, and compensation for injuries to people or property, imposed by the director from owners or operators of hazardous waste treatment, storage, and disposal facilities.

“Hazardous waste” means hazardous waste as defined in the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. 6901, et. seq.), as amended.]

“Incineration” means the treatment of solid waste by burning in a furnace designed for the purpose wherein solid waste is essentially reduced to ash, carbon dioxide, and water vapor.

["Manifest" means the form used for identifying the quantity, composition, and origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.]

“Open dump” means an unregulated disposal site that is operating without required pollution control measures.

“Sanitary landfill” means a land site on which engineering principles are utilized to bury deposits of solid waste without creating a nuisance or hazard to public health or safety.

“Solid waste” means garbage, refuse, and other discarded [solid] materials, including solid [waste materials], liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, [and] sludge from waste treatment plants, water supply treatment plants, residues from air pollution control facilities, and [from] community activities, but does not include solid or dissolved material in domestic sewage or other substances in water sources[.] such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flows, or other common water pollutants. [This definition is also intended to include liquid waste materials such as waste oil, pesticide, paints, solvents, and hazardous waste.

“Treatment” when used with reference to hazardous waste means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.]”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval, provided that section 342- , titled “Prohibition” in section 2 of this Act, and section 5 shall take effect upon the adoption of rules necessary to implement this Act.

(Approved June 13, 1988.)

#### Note

1. Should be underscored.