

ACT 245

S.B. NO. 2653

A Bill for an Act Relating to Solid Waste.

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

SECTION 1. Chapter 342H, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . MUNICIPAL SOLID WASTE LANDFILL CRITERIA

§342H- Definitions. Unless otherwise explicitly stated, the definitions provided in section 342H-1 shall control the meaning of the terms used in this part. As used in this part, unless the context otherwise requires:

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Existing municipal solid waste landfill unit" means any municipal solid waste landfill unit that is receiving solid waste on October 9, 1993.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from electric power generation, water treatment, and the manufacture of the following products: fertilizers and agricultural chemicals; food and related products and byproducts; inorganic chemicals; iron and steel; leather and leather products; nonferrous metals; organic chemicals; plastics and resins; pulp and paper products; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textiles; and transportation equipment. This term does not include mining waste or oil and gas waste.

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

"Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives household waste and is not a land application unit, surface impoundment, injection well, or waste pile. A municipal solid waste landfill unit also may receive other types of waste regulated under subtitle D of RCRA, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A municipal solid waste landfill unit may be a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion.

"New municipal solid waste landfill unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.

"Operator" means the person responsible for the overall operation of a facility or part of a facility.

"Owner" means the person who owns a facility or part of a facility.

"RCRA" means the federal Resource Conservation and Recovery Act, as amended, 42 United States Code, §§6901 to 6991i.

§342H- Prohibition. No person, including any federal agency, the State, or any county, shall construct, operate, modify, expand, or close a municipal solid waste landfill unit, or any component of a municipal solid waste landfill unit, without first obtaining a permit from the director. All permits for municipal solid waste landfill units shall be subject to such terms and conditions as the director determines are necessary to protect human health or the environment.

§342H- Applicability and requirements. (a) The provisions of this part do not apply to municipal solid waste landfill units that do not receive wastes after October 9, 1991.

(b) Municipal solid waste landfill units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are exempt from the requirements of this part except the final cover requirement prescribed by rules adopted pursuant to this part. The final cover shall be installed within six months of the last receipt of wastes. Owners and operators of municipal solid waste landfill units subject to this subsection that fail to complete cover installation within six months from the date of the last receipt of wastes shall be subject to all the requirements of this part, and rules adopted pursuant to this part, subject to such exemptions as may be provided by those rules.

(c) The provisions of this part apply to owners and operators of new municipal solid waste landfill units, existing municipal solid waste landfill units, and lateral expansions, except as otherwise provided in this part or otherwise exempted by rules adopted pursuant to this part.

(d) Following closure of a municipal solid waste landfill unit, or a component of a municipal solid waste landfill unit, the owner or operator of the unit shall conduct post-closure care for a period of thirty years. The director may increase the length of the post-closure care period if the director determines that the lengthened period is necessary to protect human health and the environment. The director may decrease the length of the post-closure care period if the owner or operator of the closed municipal solid waste landfill unit demonstrates to the satisfaction of the director that the reduced period is sufficient to protect human health and the environment.

(e) Owners and operators of municipal solid waste landfill units that receive waste on or after October 9, 1993, shall comply with the financial assurance criteria that the director shall establish by rules adopted pursuant to this part. Such rules shall be effective no later than April 9, 1994.

(f) Municipal solid waste landfill units containing sewage sludge shall comply with the provisions of this part and the rules adopted pursuant to this part.

(g) In addition to compliance with the provisions of this part and rules adopted pursuant to this part, owners and operators of a municipal solid waste landfill unit shall comply with any other applicable state and federal law.

§342H- Public participation. The director may adopt rules providing for public participation in the process of reviewing applications for permits, permit renewals, permit modifications, selection of corrective action remedies, and related matters. Such rules may require applicants and permittees to be responsible for the publication of notices, making documents and relevant information available to the public for public review and comment and conducting public hearings. The rules may also include public participation provisions similar to any promulgated by the United States Environmental Protection Agency for municipal solid waste landfill permit programs. Public notices shall be given of the director's final determination on permit applications, renewals, modifications, and selection of corrective action remedies. A public hearing may be held before the director rules on a permit application, renewal, modification, or selection of corrective action remedies if the director determines that a public hearing would be in the public interest.

§342H- Rules; specific. The director may establish by rule the criteria, standards, and requirements relating to the location, design, construction, operation, maintenance, expansion, closure, and post-closure care of municipal solid

waste landfill units. In addition, the director may establish by rule assessment monitoring, ground-water monitoring, ground-water protection, landfill gas monitoring, landfill gas collection, detection monitoring, corrective measure, remedial action, preventive action, response action, manifest, record keeping, notification, public meeting, deed notation, and financial assurance requirements, standards, or criteria for municipal solid waste landfill units.

§342H- Other powers. In addition to any other power or duty prescribed by law or this part, the director may establish by rule a municipal solid waste landfill program that meets or exceeds the standards, criteria, and requirements set forth in the federal municipal solid waste landfill regulations, 40 C.F.R. Part 258.

§342H- Intervention. Any person shall have the right to intervene in any civil action to enforce the provisions of this part if the person has an interest that is, or may be, adversely affected.”

SECTION 2. Section 342H-1, Hawaii Revised Statutes, is amended by amending the definition of “solid waste” as follows:

““Solid waste” means garbage, refuse, and other discarded materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining, and agricultural operations, sludge from waste treatment plants and water supply treatment plants, and residues from air pollution control facilities and community activities, but does not include solid or dissolved materials 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[.], or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923).”

SECTION 3. Section 342H-4, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The failure of the director to act on an application for the issuance of a permit or an application by a permit holder for the modification or renewal thereof within one hundred eighty days of the receipt of such application, except for all federally delegated permit programs[,], and federally approved programs, shall be deemed a grant of such application provided that the applicant acts consistently with the application and all plans, specifications, and other information submitted as a part thereof.”

SECTION 4. Section 342H-5, Hawaii Revised Statutes, is amended to read as follows:

“[**§342H-5**] **Variances.** (a) Every application for a variance shall be made on forms furnished by the department and shall be accompanied by a complete and detailed description of present conditions, how present conditions do not conform to applicable standards, and such other information as the department may by rule prescribe.

(b) Each application for a variance shall be reviewed in light of the descriptions, statements, plans, histories, and other supporting information submitted with the application, such additional information as may be submitted

upon the request of the department, and the effect or probable effect upon the standards established pursuant to this chapter.

(c) Whenever an application for a variance is approved, the department shall issue a variance authorizing the disposal of solid waste in nonconformance with applicable standards or rules. No variance shall be granted by the department unless the application and the supporting information clearly show that:

- (1) The continuation of the function or operation involved in the disposal occurring or proposed to occur by the granting of the variance is in the public interest as defined in section 342H-4;
- (2) The disposal occurring or proposed to occur does not substantially endanger human health or safety; and
- (3) Compliance with the applicable standards or rules from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(d) Any variance or renewal thereof shall be granted within the requirements of this section and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

- (1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, control, or abatement of the solid waste pollution involved, it shall be only until the necessary means for prevention, control, or abatement become practicable and subject to the taking of any substitute or alternate measures that the department may prescribe. No renewal of a variance granted under this subsection shall be allowed without a thorough review of known and available means of preventing, controlling, or abating the solid waste pollution involved[.];
- (2) The director may issue a variance for a period not exceeding five years[.]; and
- (3) Every variance granted under this section may be subject to such conditions as the director may prescribe.

(e) Any variance granted pursuant to this section may be renewed from time to time on terms and conditions and for periods not exceeding five years which would be appropriate on initial granting of a variance; provided that the applicant for renewal has met all of the conditions specified in the immediately preceding variance; and provided further that the renewal, and the variance issued in pursuance thereof, shall provide for a variance not greater than that attained pursuant to the terms of the immediately preceding variance at its expiration. No renewal shall be granted except on application therefor. Any such application shall be made at least one hundred eighty days prior to the expiration of the variance. The director shall act on an application for renewal within one hundred eighty days of the receipt of such application.

(f) The director may afford a hearing in accordance with chapter 91 in relation to an application for the issuance, renewal, or modification of a variance.

(g) No variance granted pursuant to this chapter shall be construed to prevent or limit the application of any emergency provisions and procedures provided by law.

(h) Any application for a variance submitted pursuant to this chapter, shall be subject to the following public participation requirements [listed below.]:

- (1) Public notices of every completed application for a variance shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed disposal or other proposed activity. Procedures for the circulation of public notices shall include at least the following:

- (A) Notice shall be circulated within the geographical areas of the proposed disposal or other proposed activity; such circulation shall include publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation;
 - (B) Notice shall be mailed to any person or group upon request; and
 - (C) The director shall add the name of any person or group upon request to a mailing list to receive copies of notices for all variance applications within the State or within a certain geographical area[.];
- (2) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit their written reviews with respect to the variance application and the tentative determinations of the department, if any. The period for comment may be extended at the discretion of the director[.];
- (3) The contents of public notice of applications for variances shall include at least the following:
- (A) Name, address, and phone number of agency issuing the public notice;
 - (B) Name and address of each applicant;
 - (C) Brief description of each applicant's activities or operations which result in the disposal or other activity described in the variance application;
 - (D) A short description of the location of each disposal or activity indicating whether such disposal or activity is new or existing;
 - (E) A brief description of the procedures for the formulation of final determinations, including the thirty-day comment period required by paragraph (2) of this subsection and any other means by which interested persons may influence or comment upon those determinations; and
 - (F) Address and phone number of state agency premises at which interested persons may obtain further information and inspect a copy of the variance applications and supporting and related documents[.]; and
- (4) The director may hold a public hearing if, after reviewing the comments submitted under paragraph (2), the director determines that a public hearing is warranted. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed disposal or other proposed activity, or other appropriate area, at the discretion of the director.

(i) Variances shall not be granted to owners or operators of municipal solid waste landfill units except where specifically provided for in the rules adopted pursuant to this part."

SECTION 5. Section 342H-7, Hawaii Revised Statutes, is amended to read as follows:

"§342H-7 Enforcement. [(a) If the director determines that any person is violating this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter, the director:

- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and may contain an order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports.
 - (2) May require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.
 - (3) May impose penalties as provided in section 342H-9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (b) If the director determines that any person is continuing to violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter after having been served notice of violation, the director:
- (1) Shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the alleged violation and shall contain an order requiring that person to submit a written schedule within thirty days specifying the measures to be taken and the time within which such measures shall be taken to bring that person into compliance with the provisions of this chapter, the provisions of any rule adopted pursuant to this chapter, or the conditions of any permit or variance issued pursuant to this chapter.
 - (2) Shall accept or modify the submitted schedule within thirty days of receipt of such schedule. Any schedule not acted upon after thirty days of receipt by the director shall be deemed accepted by the director.
 - (3) Shall issue to the alleged violator or violators a cease and desist order against the activities that violate this chapter, any rule adopted pursuant to this chapter, or any condition of a permit or variance issued pursuant to this chapter if that person does not submit a written schedule to the director within thirty days. This order shall remain in effect until such time that the director accepts the written schedule.
 - (4) May impose penalties as provided in section 342H-9 by sending a notice in writing, either by certified mail or by personal service, to the alleged violator or violators describing such violation.
- (c) If the director determines that any person has violated an accepted schedule or an order issued pursuant to this section, the director shall impose penalties by sending a notice in writing, either by certified mail or by personal service, to that person, describing such nonadherence or violation with reasonable particularity.]
- (a) If the director determines that any person has violated or is violating any provision of this chapter, any rule adopted pursuant to this chapter, or any term or condition of a permit issued pursuant to this chapter, the director may do any one or more of the following:
- (1) Issue an order assessing a civil penalty for any past or current violation;
 - (2) Require compliance immediately or within a specified time period;
and

- (3) Commence a civil action in the circuit court in the circuit in which the violation occurred or the person resides or maintains the person's principal place of business for appropriate relief, including a temporary, preliminary, or permanent injunction.

(b) Any order issued pursuant to this section may include a suspension, modification, or revocation of a permit issued under this chapter, and shall state with reasonable specificity the nature of the violation. Any penalties assessed in the order shall be in accordance with section 342H-9.

[(d)] (c) Any order issued under this chapter shall become final, unless not later than twenty days after the notice of order is served, the person or persons named therein request in writing a hearing before the director. Any penalty imposed under this chapter shall become due and payable twenty days after the notice of penalty is served unless the person or persons named therein request in writing a hearing before the director. Whenever a hearing is requested on any penalty imposed under this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. Upon request for a hearing, the director shall require that the alleged violator or violators appear before the director for a hearing at a time and place specified in the notice and answer the charges complained of.

[(e)] (d) Any hearing conducted under this section shall be conducted as a contested case under chapter 91. If after a hearing held pursuant to this section, the director finds that a violation or violations have occurred, the director shall affirm or modify any penalties imposed or shall modify or affirm the order previously issued or issue an appropriate order or orders for the prevention, abatement, or control of the violation or disposals involved, or for the taking of such other corrective action as may be appropriate. If, after a hearing on an order or penalty contained in a notice, the director finds that no violation has occurred or is occurring, the director shall rescind the order or penalty. Any order issued after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the violation or disposals.

[(f)] (e) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the director may institute a civil action in the name of the State to recover the civil penalty which shall be a government realization.

In any proceeding to recover the civil penalty imposed, the director need only show that notice was given, a hearing was held or the time granted for requesting a hearing has run without such a request, the civil penalty was imposed, and that the penalty remains unpaid.

[(g)] (f) In connection with any hearing held pursuant to this section, the director shall have the power to subpoena the attendance of witnesses and the production of evidence on behalf of all parties."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval.

(Approved June 17, 1992.)